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FOREWORD

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TREASURY DECISIONS

UNDER INTERNAL REVENUE LAWS

OF THE UNITED STATES

Volume 6

January-December, 1903

As a copy of the original is practically unobtainable, this volume is offered to enable law libraries to complete their collection of government publications.

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DENNIS & CO., INC.

Buffalo, N. Y.

May, 1944

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TREASURY DECISIONS

UNDER

INTERNAL REVENUE LAWS

OF THE

UNITED STATES.

Vol. 6—January–December, 1903.

LESLIE M. SHAW,
Secretary of the Treasury.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1904.

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INTRODUCTION.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 2, 1904.

To officers of internal revenue and others:

The within decisions of the Commissioner of Internal Revenue, rendered during the calendar year 1903, upon the construction to be given to the various acts of Congress relating to the internal revenue, are published for the information and guidance of officers of the internal revenue and others concerned.

This volume contains rulings numbered from 613 to 735, inclusive.

JOHN W. YERKES,
Commissioner.

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INTERNAL REVENUE.

(613.)

Oleomargarine—Relative to the designation of consignees reported on Forms 216 and 217.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 12, 1903.

To collectors of internal revenue:

You are advised that collectors of districts wherein manufacturers of, or wholesale dealers in, oleomargarine are located, are required to mark in the column headed "Designation," on inside pages of reports on Forms 216 and 217, respectively, against the name of consignees in their district, the letter "D" for dealer and "C" for consumer, as the case may be, before forwarding the reports to the Commissioner of Internal Revenue.

In case of designation by a manufacturer or wholesale d[illegible] the consignees reported on Form 216 or 217, the collect[illegible]uld indicate by a check or other mark that he has verified such [illegible]ngs of the consignees in his district before transmitting the report to this office.

J. W. YERKES, *Commissioner.*

(614.)

Oleomargarine—Modification of Regulations No. 9, relative to cancellation by manufacturers of tax-paid stamps.

[Circular No. 8—Int. Rev. No. 639.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 12, 1903.

To collectors of internal revenue:

That part of Regulations No. 9, revised June, 1902, contained in the last paragraph on page 30, is hereby modified so as to permit the use of a rubber stamp for cancellation of tax-paid stamps for oleomargarine, in lieu of a stencil plate of brass or copper, as now required.

The rubber stamp must contain the five parallel waved lines of

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sufficient length to extend over and beyond each side of the stamp onto the wood of the package.

The printing on the stamp must be plain and distinct, and the waved lines must be fine enough to avoid obliterating the reading matter and figures contained in the tax-paid stamp.

The use of a plate of brass or copper is still permissible, it being the intention of this modification to make it optional with the manufacturers of oleomargarine to use in its stead a rubber stamp.

J. W. YERKES, *Commissioner*.

Approved: LESLIE M. SHAW, *Secretary of the Treasury*.

(615.)

Substitute for lard not to be regarded as oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 12, 1903.

Following is the text of a letter addressed to a revenue agent by the Commissioner of Internal Revenue, January 12, 1903, holding that a certain product known to the trade as a substitute for lard is not to be regarded as oleomargarine, nor taxable as such under the internal-revenue laws, although containing ingredients sometimes used in the manufacture of that article:

SIR: On October 29, 1902, you forwarded to this office a sample of an article produced by a firm in your division with the statement that the product is known to the trade as a substitute for lard and used for cooking purposes. Further, you inquired whether the product was taxable at the rate of 10 cents per pound, under the oleomargarine law, and desired to be informed as to what action should be taken.

This office, through you and other sources, immediately made a thorough investigation as to this product and its component parts, and all the facts and circumstances connected with its manufacture and marketing. In reply to your letter, I have the honor to say, first:

STATEMENT OF FACTS.

The product known as a substitute for lard has been produced by said firm for the past ten years, placed upon the markets in various parts of the country in large quantities, and no suggestion has ever heretofore been made that it was subject to any internal-revenue tax.

There has been since the beginning of its manufacture in 1893 no change made either in the ingredients used or the color of the product. It is placed upon the market in tin buckets or pails of 3,

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5, and 10 pounds, or more. It is advertised extensively, and in the advertisements submitted we find, among other statements, the following:

——— is a substitute for lard and is used in the same manner.

——— is of a rich yellow color and is an ideal shortening material. Use but two-thirds as much as you would lard.

———. Use it like lard, but use a third less. A vegetable lard you may call it, healthful, digestible, dainty, rich, made for modern folks. Used wherever lard is.

At no time and in no way has it ever been advertised as a substitute for butter, nor from the fullest investigation made can this office find that it has ever been sold as or for butter, or that it has ever been used as or for butter by purchasers. It contains no salt or butter, and has not been churned with milk or cream and has no butter flavor. Its component parts are * * * and a small quantity of coloring matter, used for the twofold purpose of keeping the product at a regular color, which might otherwise vary according to ordinary changes in the color of the ingredients used, and, furthermore, the fact that it is yellow in color prevents it ever being put upon the market and sold or bought as lard itself, which is white in color. It is oily in appearance and does not resemble butter in the slightest degree in taste or texture, it being a soft oily substance which melts quickly at a comparatively low temperature. It is not put up in separate pound packages, pats, or rolls—indeed, can not be—but is placed in tin buckets or pails, as other substances which are oily in their nature or melt easily are packed. * * *

There is no doubt but that the ingredients used * * * are such as are used frequently in the manufacture of oleomargarine, and the coloring matter employed is also the same as is used by some manufacturers when oleomargarine is colored artificially.

So far as can be discovered, there has never been a complaint lodged in this Bureau or before any official of same by makers of or dealers in butter, or by manufacturers of or dealers in oleomargarine, that this article was a product made in imitation or semblance of butter, or that it was calculated or intended to be sold as butter, or that in fact it ever was sold or bought as such.

Second:

THE LAW OF THE CASE.

Section 2 of the act of Congress of August 2, 1886, commonly called "the oleomargarine law," provides as follows:

SEC. 2. That for the purposes of this Act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard-oil, vegetable oil,

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annotto, and all other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made calculated or intended to be sold as butter or for butter.

After the passage of this act an opinion of the Attorney-General was asked as to the construction of this section. In a communication addressed by Attorney-General Garland to the honorable the Secretary of the Treasury on October 18, 1886, he said, referring to the closing sentences of said section, which are as follows: "Made in imitation or semblance of butter, or when so made calculated or intended to be sold as butter or for butter"—

In my opinion, the qualification extends to the whole section and is a necessary limitation of the statutory definition of oleomargarine. If each of the simple or compound substances mentioned in the law is taxable under the act regardless of whether it is in imitation or semblance of butter or calculated or intended to be sold as such, it results that some lubricating oils must bear the tax, although not supposed to have been in the contemplation of Congress.

To resolve a doubt upon a statute it is a familiar rule to look at the evil the statute was intended to cure. There can be no question that the object in this case was to protect the trade in legitimate butter from the damage caused by the sale of supposititious butter by requiring the manufacturers of the latter to distinguish their product by an appropriate brand and by fettering the production of the article with a tax.

In a suit in the United States circuit court, northern district of Illinois, brought to recover taxes collected upon a product known as "Fruits of the meadow," which the complainants alleged was not taxable under the act above referred to and known as "the oleomargarine act," Judge Grosscup in his opinion said:

Oleomargarine is usually made of leaf lard and beef fat churned in milk and cream, or milk, cream, and butter, to give it flavor, and colored with the vegetable oil annotto. This compound is harmless, and the law is not intended to prevent its manufacture, but only to tax its manufacture when put up in such way *as to be a substitute for butter or to lead the consumer into the belief that it is butter.* The tax practically is upon the product of such manufactures of leaf lard, beef fat, etc., as are made in the conscious imitation of butter. The purpose of Congress was to protect butter as it has commonly been known against outside competitors under the guise or appearance of butter. The test is this: Is the product a conscious imitation of butter?

CONCLUSION.

From the above review of the facts in this case, and from the law as stated and above quoted, I am of opinion that the article in question is not made in imitation or semblance of butter, nor is it calculated or intended to be sold as butter or for butter, nor in fact is it actually sold as or for butter, and no consumer could be led into the belief that it is butter.

It is not put up in such a way as to be a substitute for butter or to lead the consumer into the belief that it is butter. It does not smell like or taste like butter. It is not packed, and, indeed, can not be packed and offered upon the market as butter is. It is neither a

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conscious nor an unconscious imitation of butter. Quoting again from Judge Grosscup—

> It in no way steals any of its qualities or appearances from the product of the cow.

For the above reasons, I am clearly of the opinion that this product is not subject to the tax imposed upon colored or uncolored oleomargarine. You will govern yourself, therefore, according to the above conclusion.

Respectfully, J. W. YERKES, *Commissioner.*

(616.)

Tobacco stamps imprinted on foil wrappers—Manner of procuring and accounting for such stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 14, 1903.

To collectors of internal revenue:

Manufacturers of tobacco, desiring to use stamped tin-foil wrappers, may forward estimates of the amounts they severally desire printed for early use to the collectors of their respective districts. Upon receipt of such estimates, collectors will make an entry of the same in a record kept for that purpose, specifying the name of the manufacturer, the number and denomination of the stamps desired, and the stamp agent to whom the order will be referred, and will then forward to this office a request for the imprinting of the stamped wrappers, setting forth in full the facts contained in the entry aforesaid. The stamp agent will then be directed by this office to imprint the requisite number of wrappers for each manufacturer, and hold the same subject to the orders of the collector who requested them. No order will be issued by a collector to the stamp agent for the delivery of imprinted wrappers except upon payment by the manufacturer of the full amount of tax represented by the stamps to be delivered on such order.

Collectors will report each month on Form 76 *only* the number and value of the stamped wrappers of each kind for which they have received payment, properly charged in their accounts, and made orders on stamp agents for delivery. Collectors may keep a memoranda account with each manufacturer in the separate record containing the entry of stamped wrappers to be imprinted, crediting such account with amounts received in payment of stamps, until the stamps printed on the estimate have been exhausted, but they should not charge themselves in any manner on any form or report with the stamps contained in the original estimate and entry except when amounts are ordered and paid for as aforesaid.

J. W. YERKES, *Commissioner.*

Approved: H. A. TAYLOR, *Acting Secretary of the Treasury.*

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(617.)

Distilled spirits in bonded warehouse—Act of January 13, 1903.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 17, 1903.

To collectors and other officers of internal revenue:

Your attention is called to the act of January 13, 1903, entitled "An Act to amend the internal-revenue laws," which is printed below, and is amendatory of the act of March 3, 1899 (sec. 3294 *b*, compilation of 1900).

J. W. YERKES, *Commissioner.*

AN ACT To amend the internal-revenue laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all distilled spirits now in internal-revenue bonded warehouses or which may hereafter be produced and deposited in such warehouses shall be entitled to the same allowance for loss from leakage or evaporation which now exists in favor of distilled spirits produced, gauged, and so deposited prior to January first, eighteen hundred and ninety-nine, and subject to the same conditions and limitations.

Approved, January 13, 1903.

(618.)

Legacy tax—Decision of court.

Property passing from testator by will through executors to themselves as trustees to hold "in trust" for beneficiaries is taxable. The assessment is not laid upon the beneficiaries personally, but upon the property; not as it reaches them, but in cases like this, as it goes to the trustees for them.—Knowlton *v.* Moore (178 U. S., 41).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 17, 1903.

To collectors of internal revenue and others concerned:

The appended decision of the United States circuit court for the southern district of New York, relative to legacy tax, is published for the information and guidance of all concerned.

J. W. YERKES, *Commissioner.*

United States Circuit Court, Southern District of New York.

William K. Vanderbilt et al., executors, v. *Ferdinand Eidman, collector, etc.*

WHEELER, *J.:*

The war-revenue act of June 13, 1898 (30 Stat., 448), provides, Sec. 29, 464, 2 U. S. Comp. Stat., 2307—

"That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where whole amount of such personal property, as aforesaid shall exceed the sum of

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ten thousand dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

"First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property," with a successively increasing rate where the beneficiaries are more remote relatives and the amount or value exceeds the sum of twenty-five thousand dollars, and successively increasing fixed sums.

The plaintiffs' testator Cornelius Vanderbilt died September 12, 1899, leaving a will containing this clause:

"Seventeenth. All the rest, residue and remainder of all the property and estate, real, personal and mixed, of every description, and wheresoever situated, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, including all lapsed legacies and the principal of any annuities which may terminate and any part of my estate which may not have been effectually devised or bequeathed or from any other source, I give, devise and bequeath to my executors, hereinafter named, and the survivors and survivor of them, *in trust*, to hold said estate and invest and reinvest the same and to collect the rents, issues, income and profits therefrom for the use of my son Alfred G., and to apply so much of said net income as may be in their judgment advisable, to his support, maintenance and education, and for the care and maintenance of his property during his minority, and to accumulate any surplus income, such accumulations to be paid to him when he arrives at the age of twenty-one years and thereafter to pay the net income of said estate to him as receiver until he arrives at the age of thirty years, when he shall be put in full possession of one-half of the portion of said estate to be set apart for that purpose by my executors and the survivors of them. And upon further trust thereafter to pay to my said son, Alfred G., the income from the balance remaining of said estate until he shall arrive at the age of thirty-five years, when he shall be put in possession of the balance of said trust estate, and the said trustee shall be discharged from any and all liability and responsibility in respect thereof. If my son Alfred G. should die before attaining the age of thirty-five years, leaving issue, such portion of the estate as shall not then have come into his possession shall be divided by my executors into as many equal shares as he may leave children surviving, and one share shall be held by my executors to the use of each such child or children until he or she shall attain the age of twenty-one years, when it shall be paid to such child; but if he shall die without child or children, or if none of his children shall attain majority, then it is my will that my son Reginald C. shall, in all respects, as to said residuary estate, stand in the place and stead of his brother Alfred G., and that if Alfred shall die without issue before he attains the age of thirty years, then Reginald C. shall receive the income from said estate until he attains the age of thirty years, when he shall be put in possession of one-half the residuary estate, and thereafter Reginald C. shall receive the net income of the remaining one-half of my estate, and on arriving at the age of thirty-five years he shall be put in possession of the whole of said estate, and my said executors shall hold said estate upon such trust, and I give and devise the same accordingly. If Alfred G. and Reginald C. shall both die before being put into possession of said

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estate, and without issue, I give whatever then remains of my residuary estate to my daughters, Gertrude and Gladys Moore, share and share alike; and if either of my said daughters be then dead leaving issue, her issue to take his or her mother's share, *per stirpes* and not *per capita;* and in default of issue, the survivor shall take the principal;" and all the children named in this clause surviving him. The defendant was and is the collector of internal revenue for this district, and as such exacted from the plaintiff $311,681.36 as a tax on account of this legacy. This suit is brought to recover back this assessment, and the complaint alleges:

"IX. That in order to support the said assessment of the tax the Government did, as appeared in the proceedings before the United States commissioner and the collector of internal revenue, wrongfully and improperly claim and rule that although Alfred G. Vanderbilt then had merely a contingent interest in the principal of said residue dependent upon his attaining the age of thirty years as to one-half and thirty-five years as to the other, yet, because he is the beneficiary of the income therefrom in the interval, and inasmuch as he had at his then age an expectancy of life as shown by the mortality tables until the time when he would acquire a vested and indefeasible interest in the principal of said residue, it was to be assumed as a matter of fact that he would live until such time and ultimately receive such residue, and that in consequence there was, for the purposes of taxation, a merger of such interests and he had a present vested interest in the entire residue which was subject to a present tax under the provisions of the war-revenve act."

The defendant has demurred.

The principal ground for claiming back the money seems to be that these are several contingent legacies for the respective beneficiaries which could only be taxed at their actual value when and as they should become absolutely vested. This is, however, one bequest, and one only, of this residue to the executors in trust, primarily for the benefit of the son Alfred G., although by the happening of events it may reach others of the relatives of the testator. If it should, they are all included in the same class with this son, in the clause quoted, of section 29 of the act under which the tax was assessed, and the rate would be the same. The capacities of the executors, as such, and as trustees for the beneficiaries, although vested in the same persons, were as separate and distinct for the purpose of taking and passing the property as executors, and holding it as trustees for the beneficiaries, as if they had been, respectively, several persons. (Carey *v.* Roosevelt, 102 Fed. Rep., 569.) It would pass absolutely from the executors in their capacity, as such, to the executors as trustees for the beneficiaries, and no part of it would ever go back to the executors as such or to the estate. The act charges, "legacies or distributive shares," "passing," "from any person possessed of such property," "by will," "to any person or persons," "in trust or otherwise." This property passed from the testator, by this clause of this will, through the plaintiffs as executors to themselves as trustees, to hold "in trust" for the beneficiaries. In so passing from the testator, by will, to the persons who became executors as trustees, after the death of the testator as grantor, it precisely fulfilled the words of the statute laying the tax. The assessment is not laid upon the beneficiaries personally, but upon the property, and not upon that as it reaches them, but in cases like this as it goes to the trustees for them. (Knowlton *v.* Moore, 178 U. S., 41.)

The complaint does not show the amount of this bequest, nor how much the tax assessed upon it as a single bequest in this manner would be; and consequently not in figures whether it would be less than the $311,681.36 collected; but quite obviously by estimate it would not be less than that, and so it does not appear from the complaint that any sum too large was assessed and collected by adopting the manner set forth.

In this view, the complaint fails to show any cause of action, and can not be upheld. Demurrer sustained.

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(619.)

Special tax—Rectifiers.

Special tax as a rectifier required because of the recovery by a pharmaceutical still of alcohol used in extracting ginger from ginger root. No exemption from liability for setting up a still and reclaiming alcohol by means thereof, except in the case of druggists who use distilled spirits or wines in combination with drugs in the preparation of their medicines, who are permitted to recover, by means of a still, this alcohol for the sole purpose of using it again in the preparation of their medicines. Stills should be registered.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 17, 1903.

SIR: I have received your letter of the 9th instant, requesting, in behalf of the ——— Company, of ———, manufacturers of ginger ale, that they be relieved from payment of special tax as rectifiers heretofore required of them by reason of the fact that the alcohol used by them in extracting ginger from the ginger root is reclaimed by a pharmaceutical still, "the alcohol being used over and over again in the process."

By reference to the provisions of section 3244, Revised Statutes, third subdivision, defining rectifiers, you will see that it is imperatively required that—

Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete, * * * shall be regarded as a rectifier and as being engaged in the business of rectifying.

The alcohol used by the ——— Company as a menstruum to extract ginger from the ginger-root remains, when this process is completed, combined with the ginger, and it is to purify it and recover it from this ginger that a still is used. This is a purification of distilled spirits by the process of distillation, and is not the production of spirits contemplated by the statute as "original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes" (which is the business of a distiller). This office, therefore, under the law as it stands, is compelled to exact the special tax of a rectifier from the ——— Company because of its recovery, by distillation, of alcohol previously used by it in extracting ginger from ginger root.

The only person who is permitted to use a still for the recovery of alcohol used by him in combination with other substances is a druggist who uses distilled spirits or wine in combination with drugs in the preparation of his medicines, and, under the exempting provision

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of section 3246, Revised Statutes, is permitted to recover, by means of a still, this alcohol for the sole purpose of using it again in the preparation or making up of his medicines. No other person has any exemption from liability for setting up a still and reclaiming alcohol by means thereof.

The provisions of the internal-revenue laws relating to the distillation of spirits are of the utmost stringency; and, in order to guard against the violation of these provisions, it is required by section 3258, Revised Statutes, that every person who sets up a still, even though it is not to be used for the distillation or recovery of spirits at all, shall register his still with the collector of internal revenue in his district, by statements in duplicate, "setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used."

Respectfully, J. W. YERKES, *Commissioner.*

Hon. D. J. FOSTER, *House of Representatives, Washington, D. C.*

(620.)

Special tax—Liability under Circular 636.

Confectioners who sell ices to which they have added spirits or wine for flavoring, and which are sold as solids, are not liable to tax as liquor dealers, under the terms of Circular 636.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1903.

SIR: Your letter of the 13th instant, in regard to the scope of Circular 636, relative to druggists and others who sell soda-water drinks or similar beverages to which any distilled spirits, wine, or any compounds thereof are added, has been received.

You state that some of the confectioners in your city have been selling ices to which they have added spirits or wine for flavoring; that they are sold as solids; and the question is, Are such dealers liable to tax as liquor dealers when they add spirits or wine to ice cream or other frozen preparations? You are hereby informed that they are not. Nothing that can not be brought under the head of beverages comes within the terms of this circular.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. F. W. TUCKER, *Collector Internal Revenue, Little Rock, Ark.*

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(621.)

Assessment—Abatement.

Duty of collector to collect without questioning legality of the assessment.—Suspension of collection in certain cases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1903.

SIR: In reply to your letter of the 15th instant, relative to the claim of ———, of ———, for the abatement of $———, assessed as stamp tax on cigars, you are informed that you are correct in your assumption that when an assessment is made against an individual it is your duty to collect the same without questioning the legality of the assessment. When, however, a party presents a claim for abatement, if you have reason to believe that the claim is made in good faith, and that the assessment may have been erroneous or excessive, and are also satisfied that a delay will not endanger the collection of the tax as assessed, you are at liberty to suspend collection pending the consideration of the claim for abatement. If, however, you have reason to believe that delaying the collection will jeopardize the payment of the tax, then you should collect without waiting action upon the claim, unless otherwise instructed by this office.

In the case referred to, the ——— of ——— is surety on the bond of ———, and a delay will not jeopardize the final collection of the tax. You are, therefore, authorized to suspend collection of the tax assessed against ———, pending the final disposition of the claim by this office.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. E. B. JORDAN, *Collector First District, Brooklyn, N. Y.*

(622.)

Oleomargarine—Instructions relative to imprinting upon bricks, prints, or rolls of oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 21, 1903.

To collectors of internal revenue:

The attention of this office has been called to the fact that some of the manufacturers of oleomargarine are not complying with paragraphs 1, 2, 3, and 4 of regulations No. 9, page 26, relative to the imprinting of the word "oleomargarine" upon any brick, print, or

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roll of oleomargarine where a device or brand is imprinted; also, where a device or brand is used upon the wrapper.

You are advised that the regulations provide:

Paragraph 1. No device or brand shall be imprinted upon any brick, print, or roll of oleomargarine packed in any statutory package, unless the word "oleomargarine" is also impressed thereon, * * * and in all cases the word "oleomargarine" shall be equally displayed with any brand or word used by the manufacturer, in close proximity thereto, and on the same surface of such brick, print, or roll.

Paragraph 2. The same rule shall be observed where any device or brand is used upon the wrapper covering any brick, print, or roll of oleomargarine.

Paragraph 3. Embellishments permitted in certain cases.

The wrappers for these rolls, prints, or bricks may be in blank; but if any mark, device, or brand is used the word "oleomargarine" must appear in letters one-fourth of an inch square and in close proximity thereto, and on the same surface of each brick, print, or roll.

Paragraph 4 prohibits the use of any device, word, or words calculated to induce the public to believe that it is a product of the dairy or butter, even though the word "oleomargarine" appears on the same.

The second paragraph on page 28 recites that the use of the word "butterine" is also hereby prohibited.

You are instructed to have a rigid investigation made at all the factories and dealers' premises in your district, and to ascertain whether or not the regulations in question have been complied with.

The regulations were formulated by authority of section 20, act of August 2, 1886, and oleomargarine found on the market with prints or devices which do not conform thereto is liable to seizure and forfeiture. Collectors are expected to enforce the regulations in respect to the matter referred to, and seizure should be made of all packages offered for sale bearing devices not sanctioned by the regulations.

J. W. YERKES, *Commissioner.*

(623.)

Seizures for violations of law or under distraint—Instructions in regard to sale of seized property and reports on Forms 210 and 474.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 23, 1903.

To collectors of internal revenue:

Collectors are cautioned against incurring unnecessary expenses for advertising in connection with seizures for violation of law or under distraint made under any section of the statutes.

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The notice of seizure or sale should not be published for more weeks than is required by the law under which the proceedings are conducted, and should be published but once in each week. Charges for more than one publication each week will be disallowed. Notices should be so carefully worded as to contain all the information required by the statutes and nothing more. Matter that is immaterial should not form a part of the notice. No notice should be published in display type, but should be set in six-point (nonpareil) or other small type used for legal notices by the paper printing it. The matter should be set solid (without space between the lines), and in no case should an entire line be consumed for the name of the collector, another for his title, and another for the district, as is sometimes the case. Neither is it necessary to attach the signature of the deputy collector who may have charge of the matter, in addition to the signature of the collector.

In distraint cases, when deputy collectors charge certain fees for mileage, the provision of the second paragraph (page 104, Regs. No. 2) should be carefully observed. The amount received by the deputy collector on account of the seizure must be deducted from the *total* of his expenses as rendered on Form 63½, even though the amount received in connection with the seizure is greater than the actual expenses incurred and charged in his Form 63½. The salary and expenses of a deputy collector are paid by the Government, and he is entitled to receive nothing additional thereto. Any amount received by him in excess of his salary and actual expenses accrues to the Government.

Collectors should render accounts on Form 210 for all sales of personal property seized, whether under distraint or for violation of law. If sale is made under any other than section 3460, the number of the section should be substituted for 3460 where it appears in Form 210. All vouchers should be taken in the name of the disbursing officer (the collector) claiming credit for the disbursements, and not in the name of a deputy collector, although, if desirable, the receipt may state that the amount was received from the collector per deputy collector, giving his name.

Collectors are enjoined not to permit unnecessary delays in making sales, to guard against postponements of same beyond the time provided in the statutes, and to forward promptly at the end of each quarter their reports on Form 474.

As all reports on Forms 210 and 474 go to the Auditor for the Treasury Department for final settlement, it is desired that the foregoing instructions be strictly complied with.

J. W. YERKES, *Commissioner.*

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(624.)

Special tax—Sale of beverages.

[Internal Revenue Circular 640, relating to the liability to special tax of druggists and other persons who sell soda-water drinks, or similar beverages, to which distilled spirits, wines, or any compounds thereof are added.—Amendatory to and explanatory of Circular 636.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1903.

To collectors of internal revenue and other internal-revenue officers:

In view of the letters of inquiry received at this office concerning Circular 636, dated December 15, 1902, relating to the liability to special tax of druggists and other persons who sell soda-water drinks or similar beverages to which distilled spirits, wine, or any compounds thereof are added, collectors are advised that the purpose of said circular was to discountenance and prohibit the sale of distilled spirits, wines, or compounds thereof, in combination with soda water or other beverages of a similar character by druggists and other persons without payment of special tax, and was not intended to hold that special tax should be imposed upon persons who sell soda waters, ginger ale, or other like beverages in the condition in which they are received from the manufacturer, without adding thereto, when served by the dealer, any spirits, wine, or compounds thereof, or who add in serving the beverage only extracts in the condition in which they were received from the manufacturer of the same, and which beverages, or extracts, contain no spirits or only spirits in quantity necessary in the manufacture and for the preservation of the same.

It must be understood, however, in this connection that if any manufacturer of extracts or sirups, soda water, or other drinks susceptible of use as a beverage, introduces into such extract, sirup, or compound, in the manufacture of the same, a quantity of spirits or wine, or compounds thereof, not necessary in the manufacture or for the preservation of the same, thus constituting a compound liquor within the meaning of the statute, such manufacturer should be held liable to special tax as a rectifier, and wholesale or retail liquor dealer, or both, according to the quantity sold at one time, and the venders of such compound will render themselves liable to special tax with relation to the sale of the same, whether sold in the manner in which received from the manufacturer or otherwise.

This office does not wish to interfere with or embarrass legitimate manufacturers of extracts or sirups, soda waters, or other similar beverages which are recognized as nonalcoholic compounds or drinks; but it is intended that alcoholic beverages, no matter by

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what means produced, or through what agency introduced, shall not be vended without payment of special tax by the vender.

J. W. YERKES, *Commissioner.*

(625.)

Instructions to internal-revenue officers relative to imperfectly marked packages of renovated butter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 9, 1903.

To collectors of internal revenue and revenue agents:

Referring to regulations No. 9, supplement No. 1, concerning renovated butter, you are informed that should packages of renovated butter be found by officers of the Department of Agriculture completely marked as required by the regulations above referred to, with the exception of the revenue stamp, this omission would be regarded as a matter belonging to the Internal-Revenue Service, but the officers of the Agricultural Department, as an act of cooperation, would locate such renovated butter and notify the holder of it not to dispose of or remove the same, and would then inform the nearest internal-revenue officer of the fact. On the other hand, any revenue officer finding renovated butter on the market which does not comply with rules 16 to 22, inclusive, of the existing regulations, should promptly notify the Agricultural Department, or its nearest representative, of the location of such butter and the facts relating to it. A copy of the officer's letter should be furnished this Bureau, as well as to the collector of the district in which the suspected violation occurred. In such cases the Agricultural Department should be informed of the number of the renovated-butter factory in which the imperfectly marked goods were produced, together with the collection district in which the same is located, also the date of the removal of the goods ascertained from the date of the cancellation of the revenue stamp, and any other information bearing on the case.

J. W. YERKES, *Commissioner.*

(626.)

Modifying circular letter of January 22, 1903, relative to marking wrappers for oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 10, 1903.

To collectors of internal revenue:

A number of seizures of oleomargarine having been reported to this office as having been made under authority of its circular lette

of January 22, 1903, for the omission by manufacturers of the word "oleomargarine" from bricks, prints, or rolls of the same, and from the wrapper covering the same, such seizures were authorized to be released.

This action was taken to avoid imposing loss upon manufacturers and dealers, many of whom claimed that they had not anticipated so rigid an enforcement of the regulations in this regard, and wanted time to enable the stock on the market to be disposed of.

In order that sufficient time may be given for compliance with the regulations, paragraphs 2, 3, and 4, page 26, regulations No. 9, you are instructed that no seizures for noncompliance need be made before March 1, 1903, unless the tax-paid stamps thereon were issued subsequent to February 10, 1903.

J. W. YERKES, *Commissioner.*

(627.)

Stamp tax on sales of stocks—Finding of court.

Bucket-shop transactions, under paragraph 8 of section 8, act of March 2, 1901, amending the act of June 13, 1898.—Duty of persons conducting such business to give to parties with whom trades or transactions are had the stamped memoranda specified in said act. It is immaterial whether the defendant was conducting business solely for himself or as agent. In either case he is guilty.—T. D. 345 sustained.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1903.

To collectors and agents of internal revenue,
and all others concerned:

The appended finding of the United States district court for the southern district of Illinois, relative to bucket-shop transactions, is published for the information and guidance of all concerned.

J. W. YERKES, *Commissioner.*

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF ILLINOIS.

United States v. *Benjamin Z. Taylor.*

And now on this 9th day of February, A. D. 1903, this cause came on for trial by the court, a jury being waived, on an agreed statement of facts in writing signed by defendant in person and by Thomas Worthington, United States attorney for the southern district of Illinois, on behalf of the United States. And the court having inspected said statement of facts, and having heard the arguments of counsel on such inspection thereof, finds—

1. That during the period covered by the indictment in this cause defendant conducted the business commonly known as a "bucket shop," at Decatur, Ill., under the provisions of paragraph 8 of section 8 of the act of Congress of March 2, 1901,

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amending the act of Congress passed June 13, 1898, entitled "An Act to provide means to meet war expenditures, and for other purposes," and that during said period he made numerous trades or transactions with divers persons at Decatur, Ill., and did not give to said parties the stamped memoranda specified in said act.

2. That during the period specified in said indictment the defendant was doing business on his own account under said act at Decatur, Ill.

3. That the defendant was not during the period covered by the indictment in this cause an agent of the Central Grain and Stock Exchange of Hammond, Ind., and that the transactions covered by said indictment were transactions made and had by the defendant as principal therein and not otherwise.

4. That the stamping of the instruments evidencing transactions between the defendant and the Central Grain and Stock Exchange referred to in said written statement of facts was not a compliance with the act of Congress involved in this cause, which required the defendant to give to each of his customers a written memorandum as provided in said act at the time of each transaction between the defendant and his customer, showing the nature and details of the transactions between them, with the proper revenue stamp thereto affixed.

5. The court further finds that in view of the facts admitted by said stipulation, including Exhibit "A," thereto attached, it is immaterial whether the defendant was conducting business solely for himself or as agent for the Central Grain and Stock Exchange of Hammond, Ind.; that in either case he is guilty under the provisions of said act, which provides that "every person, association, partnership or corporation who or which shall in his or its own behalf, *or as agent*, conduct what is commonly known as a 'bucket-shop,' shall pay a stamp tax of two cents on each one hundred dollars in value or fraction thereof of the merchandise covered or pretended to be covered." * * *

The court therefore finds the defendant guilty as charged in the first count of the indictment.

It is therefore adjudged by the court that the defendant is guilty and that he pay a fine of $500 and the costs of suit to the United States, and that he stand committed to the Sangamon County jail until fine and costs are paid.

(628.)

Oleomargarine.

Instructions relative to Paragraph III, page 26, regulations No. 9, revised, relative to devices, designs, words, or letters for embellishing bricks, prints, or rolls of oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1903

To collectors of internal revenue and other revenue officers:

This office has received a number of photographs of bricks, prints, and rolls of oleomargarine bearing imprints of devices or designs by way of embellishment or finish, on which the word "oleomargarine" does not appear.

In most of the cases submitted the devices are not such as are calculated to induce the belief that the oleomargarine is a product of the dairy, or butter.

This office has been asked whether it is necessary for the word

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"oleomargarine" to be impressed upon a brick, print, or roll in cases where only devices for embellishment are used.

By reference to Paragraph III, page 26, regulations No. 9, revised June, 1902, there will be noted the following:

Manufacturers will be permitted to impress upon their rolls, prints, or bricks marks or embellishments in the way of a finish for the same, without the word "oleomargarine" appearing thereon, provided said marks or embellishments are first presented in duplicate photographic copies, serially numbered, to this office for approval.

This office holds that where photographs of such designs are submitted for approval, and the same are approved for use by manufacturers of oleomargarine, it will not be necessary to include the word "oleomargarine" in connection with such embellishments.

Collectors of internal revenue and others interested are informed that this office will not sanction any device or design on bricks, prints, or rolls of oleomargarine in which appear a clover leaf, sheaf of wheat, a bell, or any word or letter for embellishment or finish, unless the word "oleomargarine" is impressed on the same surface with the device, as required by the regulations.

Collectors will submit to this office for approval or disapproval such designs only concerning which, in their opinion, there is any doubt as to their being in compliance with the regulations.

J. W. YERKES, *Commissioner.*

(629.)

Special tax—Clubs.

Where any person conducting business as a retail liquor dealer in the name of a club makes sworn return and pays the special tax, his name, as well as the name of the club, must be entered by the collector in his record No. 10, together with the particular location of the place at which the business is carried on.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D C., February 16, 1903.

Sir: In reply to the closing part of your letter of the 20th ultimo, wherein you say that "individuals are taking out the special-tax stamps in the names of clubs," and inquiring "whether both the name of the individual and the firm name under which he does business are to appear upon the record 10," you are hereby advised in the affirmative.

The mere entry of the club name is not sufficient. Not only should the name of the club be entered, but the name of the person conducting it and making the sworn return (Form 11) should also be entered in record No. 10, together with the particular place at which the business is carried on.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. B. BETTMANN, *Collector First District, Cincinnati, Ohio.*

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(630.)

Stamp tax under Schedule B—Bottled beer.

A mild form of beer put up in bottles and labeled "J. D. Iler's Rochester Tonic, Kansas City, Mo., U. S. A.," liable to stamp tax under Schedule B, act of June 13, 1898, while that statute was in force.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 25, 1903.

To officers of internal revenue and all others concerned:

The appended decision of the United States circuit court of appeals for the eighth circuit, relative to stamp tax on tonics under Schedule B, act of June 13, 1898, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.—No. 1777.—DECEMBER TERM, 1902.

United States of America, plaintiff in error, v. *J. D. Iler Brewing Company, defendant in error.*

[In error to the circuit court of the United States for the western district of Missouri.]

Before CALDWELL, SANBORN, and THAYER, circuit judges.

STATEMENT.

Schedule B of the act of Congress of June 13, 1898 (30 U. S. Stat. at L., 462), provides as follows:

"For and upon every packet, box, bottle, pot, or phial, or other inclosure containing any pills, powders, tinctures, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except natural spring waters and carbonated natural spring waters), essences, spirits, oils, and all medicinal preparations or compositions whatsoever, made and sold, or removed for sale, by any person or persons whatever, wherein the person making, or preparing the same has or claims to have any private formula, secret, or occult art for the making or preparing the same, or has, or claims to have, any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body" shall pay stamp taxes as thereafter set forth.

Section 20 of the same act provides:

"The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark, or proprietary medicine in general, *or which are advertised on the package or otherwise* as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use, or effect."

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Section 3449 of the Revised Statutes of the United States provides that—

"Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such an act to be done, he shall forfeit such liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars."

The plaintiff, a brewing association, manufactured and put on the market among other products, one which it bottled and labeled "J. D. Iler's Rochester Tonic, Kansas City, Mo., U. S. A.," and sold the same as a tonic, and had a large sale in localities where the laws prohibited the sale of beer. The proper officers of the United States Internal Revenue Department assessed a tax against the plaintiff for the manufacture and sale of this article under Section B of the act of Congress quoted, which the plaintiff paid under protest and brought this suit to recover it back. The plaintiff recovered in the lower court and the United States sued out this writ of error.

CALDWELL, circuit judge, after stating the case as above, delivered the opinion of the court:

It appears the article which the plaintiff put up in bottles and labeled "J. D. Iler's Rochester Tonic, Kansas City, Mo., U. S. A.," and which it put on the market and sold as and for a tonic, was "a mild form of beer" containing "about 2 per cent of alcohol," and that the plaintiff paid the revenue tax of $2 per barrel on the same as beer before it was bottled. The contention of the plaintiff is that this article is not a tonic within the meaning of Schedule B of section 30 above quoted, and for that reason is not liable to the stamp tax on tonics imposed by that section.

Schedule B of section 30 includes "every * * * bottle * * * containing any * * * medicinal preparations or compositions whatsoever, * * * or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body." And section 20 provides that the stamp taxes provided for in Schedule B shall apply to all articles "*which are advertised on the package* or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, *use, or effect.*"

The court does not feel called upon to go into any extended inquiry as to the exact nature of this tonic or its value for medicinal purposes. It is sufficient to say that its medicinal virtues probably equal, if they do not excel, those of the majority of the popular tonics on the market for the sale of which stamp taxes are assessed and paid without question. Alcohol was present in this tonic and probably constituted its chief tonic quality, as it does in many tonics. A tonic is defined to be "any remedy which improves the tone or vigor of the fibres of the stomach and bowels or of the muscular fibres generally" (Century Dictionary, title "Tonic"). Among the drugs or preparations which are classed as tonics are "weak alcoholic beverages in very moderate quantities" (Universal Cyclopædia, title "Tonic"). The same authority says: "The stimulant and tonic properties of beer are due to the alcohol and bitter principle of the hop, while its nutritive value is ascribed to the extractive matters derived chiefly from the malt. The exact character of many of the constituents of beer is not known" (*ib.*, title "Beer").

Beyond all question the article put on the market by the plaintiff and labeled as a tonic was a tonic as that term is defined by standard authorities. Whatever else it contained, it contained alcohol and the bitter principle of the hop in proportions that made it a mild tonic instead of an intoxicating beverage. This is undeniable since the

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plaintiff explains that its reason for putting the article up in the manner it did was to sell it in the Indian Territory and the State of Kansas, and other prohibition localities where it was unlawful to sell ordinary beer and other intoxicating beverages.

It is common knowledge that physicians frequently prescribe some kinds of beer as a tonic to be taken by their patients for physical ailments. The word tonic in itself signifies to the common understanding a preparation having medicinal qualities. The plaintiff unquestionably used the word in this sense, as it well might do, for, as we have seen, the alcohol and hop extract which the preparation contained did constitute it a tonic according to all definitions of that term, which might well be used, and often is used, for medicinal purposes, and brought it directly within the terms of the statute which embraces every medicinal preparation or composition whatsoever which is held out as having remedial properties or as remedies for any diseases or affections of the human body, or which are advertised on the package or otherwise as remedies for any ailment, or as having any special claim to merit or to any peculiar advantage in mode of preparation, quality, use, or effect.

By labeling its bottles "J. D. Iler's Rochester Tonic" the plaintiff did thereby distinctly advertise on the package that its tonic had tonic or medicinal qualities. The statute does not require the ingredients of the tonic or its mode of preparation to appear on the package. The plaintiff will be presumed to have conformed to the law which prohibited it under heavy penalties from shipping or removing its fermented liquors under any other than the proper name to designate their kind and quality. The plaintiff knew the ingredients and qualities of its products, and with this knowledge and the further knowledge that the law required it under heavy penalties to mark or label its packages with "the proper name" of their contents, it deliberately chose to name and label this product "Rochester Tonic" and put it on the market as such and obtained an extensive sale for it in that character. Having enjoyed all the benefits of its sale as a tonic, it is now too late to call it by another name for the purpose of escaping taxation. Law and morals alike forbid the allowance of such a claim. We feel constrained to accept the name the plaintiff itself bestowed on its product under the most serious sanctions, and thus acquit it of a deliberate intention to perpetrate a fraud on the public and violate the criminal laws of the United States. Moreover, to hold otherwise would give the plaintiff a great and unfair advantage over its competitors in the fermented liquor trade.

It is said that to compel the plaintiff to pay a stamp tax on this product will be subjecting it to double taxation, but it is not so. A tax paid on beer in the barrel does not exempt that product from a stamp tax when it possesses mild tonic properties and is put up in bottles and named and labeled in a manner that brings it within the purview of Schedule B. The plaintiff voluntarily assumed the obligation to pay the stamp tax when it bottled and labeled and named it a tonic which, as we have seen, it really was.

It was amply compensated for paying a stamp tax by the extended sale of its tonic to persons who wanted to purchase a tonic and not beer or any stronger beverage, and by its very extended sale in localities where beer could not be sold.

For the sale of "Rochester Tonic" the plaintiff paid no tax until it paid the tax which it seeks in this suit to recover back. Moreover, it would be entirely competent for Congress to impose a tax on beer in barrels and an additional tax on it when put up in bottles.

If the plaintiff had been proceeded against criminally for a violation of section 3449 of the Revised Statutes, it is not doubted but what it could and would have successfully defended the prosecution upon the ground that the contents of these bottles was not ordinary beer but a mild tonic, and that the bottles were therefore truthfully labeled.

The judgment of the circuit court is reversed and the cause remanded with instructions to dimiss the plaintiff's petition.

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(631.)

Use by dealers of the name or names appearing on their special-tax stamps when ordering oleomargarine.

[Circular No. 641.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 26, 1903.

To collectors of internal revenue:

From reports received from various collection districts it appears that in many instances wholesale and retail dealers, or those acting for them, in ordering oleomargarine use a name or names other than those appearing on the special-tax stamp issued to such dealers. This practice tends to complicate investigations pursued by this office, increases the volume of correspondence, and renders more difficult the location of purchasers of oleomargarine, and the determination as to whether or not such purchasers are liable to the payment of special tax, and may subject such persons to a special-tax liability under the law.

You are instructed to inform all dealers located in your district that they will save themselves trouble and possible expense if in ordering oleomargarine the name or names used are those appearing on their special-tax stamps, and that the law and regulations must be strictly complied with. This ruling applies equally to all dealers purchasing oleomargarine, whether individuals, firms, or corporations, or members of such making purchases of oleomargarine for sale by their respective firms or corporations.

A copy of this circular should be placed in the hands of every dealer in oleomargarine.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(632.)

Special tax—Army-post exchanges.

Army-post exchanges are not required to pay special tax as dealers in oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 4, 1903.

SIR: In reply to the letter addressed to you by the Armour Packing Company, of Kansas City, which you referred to this office on the 2d ultimo, will you please inform them that special tax is not required to be paid by army-post exchanges under the control of the

War Department of the United States as wholesale or retail dealers in oleomargarine.

The decision of the court of claims in the case of Thomas B. Dugan *v.* United States (No. 21285 in TREASURY DECISIONS, 1899, vol. 1, p. 1171), sustaining the ruling of this office that post exchanges under the complete control of the Secretary of War as governmental agencies are not subject to special tax as retail liquor dealers, applies equally to these post exchanges with reference to their transactions in oleomargarine.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. J. M. SIMPSON,
Collector Internal Revenue, Leavenworth, Kans.

(633.)

Wine manufactured from prunes.

There is no liability for simply manufacturing wine from prunes not made in imitation of sparkling wine and with no admixture of distilled spirits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 4, 1903.

SIR: Your letter of the 25th ultimo has been received, inquiring "whether any revenue must be paid to the Government on wine manufactured from prunes."

If it is simply a wine manufactured from the juice of prunes, and is not made in imitation of sparkling wine, and if there is no addition of distilled spirits thereto (sec. 3328, Rev. Stat.), there is no tax thereon under the internal-revenue laws of the United States; but dealers therein are required to pay special tax as liquor dealers under these laws.

If, in making the prune wine to which you refer, distilled spirits or other materials are mixed therewith, changing it into a spurious, imitation, or compound liquor in contemplation of the third paragraph of section 3244, Revised Statutes, a person who manufactures this liquor for sale is required to pay special tax as a rectifier and to comply with all the provisions of the internal-revenue laws relating to rectifiers; and he is also required to pay special tax as a liquor dealer for selling this compound liquor. All other persons engaged in its sale are required to pay special tax as liquor dealers.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. R. J. REEVES, *Wilbur, Wash.*

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(634.)

Rebate on packages of tobacco and snuff.

Amendment to the war-revenue repeal act in regard to the payment of rebate on packages of tobacco and snuff.—Instructions in regard to claims.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 5, 1903.

To collectors of internal revenue and others:

The act approved March 3, 1903, making an appropriation to supply a deficiency in the appropriation for payment of rebate of tax on tobacco and snuff under act of April 12, 1902, and for other purposes, provides as follows:

That claims for rebates on tobacco and snuff as set out in section four of the Act of April twelfth, nineteen hundred and two, which were presented after the sixty days' limit therein specified, shall be allowed and paid upon proper proof: *Provided*, That the tobacco and snuff on which such rebates are claimed were duly inventoried on July first, nineteen hundred and two, in accordance with the regulations of the Commissioner of Internal Revenue, but no such claims shall be paid unless presented prior to April first, nineteen hundred and three.

All claims included in the foregoing provisions presented to collectors or their deputies prior to April 1, 1903, will be received and forwarded to this office in the regular order, the same as though they had been regularly presented within sixty days after July 1, 1902. The date of the receipt of the collector must be indorsed on each claim before transmittal to this office.

J. W. YERKES, *Commissioner.*

(635.)

Sale of leaf tobacco by farmers.

Farmers and growers of tobacco are privileged to sell leaf tobacco of their own growth and raising without restriction as to the quantity sold, the place of sale, or the business of the person who buys the tobacco.—A farmer is not privileged to stem, roll, twist, plait, or otherwise change the tobacco and prepare it for sale or consumption without payment of tax.—A farmer or grower of tobacco, or other person, who sells leaf tobacco not of his own growth or raising directly to consumers is regarded as a manufacturer of tobacco, and all leaf tobacco so sold regarded as a manufactured tobacco subject to tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 12, 1903.

SIR: I have received your letters, dated 7th and 9th instant, respectively, presenting the following questions:

1. You ask, Did the Fifty-sixth or Fifty-seventh Congress relieve tobacco growers of taxes on tobacco raised by them, and if so, under that statute and section thereof?

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2. Does the law tax, and if so, how much, tobacco growers when they stem or twist their tobacco for their own use or to sell the same?

3. Can tobacco growers stem or twist their tobacco for their own personal use without paying a tax?

4. Can tobacco growers stem or twist their tobacco for the purpose of giving it away without paying a tax?

5. You ask for the departmental or judicial definition of the term "dealer in tobacco."

6. You ask for the definition of the term "manufacturer of tobacco."

7. You ask whether a tobacco grower who stems or twists his tobacco grown on his own farm, or purchased from a neighbor, is a manufacturer, or, in other words, whether stemming and twisting tobacco is manufacturing.

In conclusion, you ask if there is in existence any law which requires a farmer who raises tobacco to pay any tax for *raising tobacco*, or for stemming his own tobacco or that which he purchases from another farmer who grows the tobacco.

If there is such law you ask to be referred to it and to the section thereof, and you ask whether a farmer who grows tobacco can take that tobacco and sell it without paying a tax, and to whom he is allowed to sell it without paying any tax.

Without attempting to give you a direct or categorical answer to each question as presented, I have to inform you that at the first session of the Fifty-seventh Congress, by act approved April 12, 1902, section 3, the following law was passed relating to tobacco:

SEC. 3. That upon tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected, in lieu of the tax now imposed by law, the following taxes:

On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of six cents per pound. And snuff-flour, when sold, or removed for use or consumption, shall be taxed as snuff, and shall be put up in packages and stamped in the same manner as snuff.

On all chewing and smoking tobacco, fine-cut, cavendish, plug, or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of six cents per pound.

You will not find in this section any exemption in favor of the farmer, who is not privileged to twist, stem, or otherwise change his tobacco and prepare it for consumption. This section is only a reenactment of section 3368 of the Revised Statutes of 1873, act of July 20, 1868, section 61, and which last act first imposed a stamp tax on tobacco. This provision of law has been in force continuously without change, except as to the rate of tax, since 1868.

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Section 3362 of the Revised Statutes, and amendatory acts, require that all manufactured tobacco and snuff shall be prepared and put up by the manufacturer thereof in certain specified packages and in no other manner before removal for sale or consumption, and provides that all cavendish, plug, and twist tobacco shall be put up in certain packages, and smoking tobacco and all cut and granulated tobacco in certain other packages; and this section makes no exemption in favor of the farmer or grower of tobacco.

The definition of a "manufacturer of tobacco" will be found in subsection 9 of section 3244 of the Revised Statutes, as amended by section 69, act of August 28, 1894. Said section 69 provides that—

Every person whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf tobacco, tobacco-stems, scraps, clippings, or waste, by sifting, twisting screening, or any other process, shall be regarded as a manufacturer of tobacco.

The second paragraph of that section provides that—

Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff or cigars, or to persons who purchase in packages for export; and all tobacco so sold by such persons shall be regarded as manufactured tobacco, and such manufactured tobacco shall be put up and prepared by such manufacturer in such packages only as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe: *Provided*, That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco; and so much of section three thousand two hundred and forty-four of the Revised Statutes of the United States, and acts amendatory thereof, as are in conflict with this Act are hereby repealed.

In the first paragraph every person is regarded as a manufacturer of tobacco who in any manner prepares his leaf tobacco for consumption by crushing, twisting, stemming, grinding, or otherwise changing the tobacco from its natural condition.

In the second paragraph every person is regarded as a manufacturer of tobacco who sells and delivers his leaf tobacco in its natural condition to consumers, or to persons other than registered dealers in leaf tobacco, manufacturers of tobacco or cigars, or persons who buy leaf tobacco in packages for export; and all leaf tobacco so sold by such person is regarded as a manufactured tobacco subject to tax; but there is this exception that farmers and growers are not to be regarded as manufacturers for selling *leaf tobacco* of their own growth and raising.

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You ask for a departmental or judicial definition of the term a "dealer in tobacco." In reply, you are advised that—

Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, or cigars, shall be regarded as a dealer in tobacco.

The difficulty in the way of a lucid interpretation of the statutes relating to the sale of leaf tobacco by farmers has been that such restrictions have been coupled with special-tax provisions and not contained in any separate statutes.

The tenth subdivision of section 3244, Revised Statutes, imposing special tax, exempted a farmer from paying the tax as a dealer in leaf tobacco, but he was required to confine his sales to tobacco of his own production and that received by him from tenants as rent, and who produced the same on his land. This statute also provided that nothing therein should be construed to exempt the farmer or planter from the special-tax who, by peddling or otherwise, sold his leaf tobacco at retail directly to consumers. This provision was also reiterated in section 14, act of March 1, 1879.

The statute imposed upon retail dealers in leaf tobacco a special tax of $500 per annum and 50 cents for every dollar of sales in excess of $1,000. All persons were regarded as retail dealers who sold leaf tobacco directly to consumers, or to persons other than those who had paid special tax as leaf dealers, or manufacturers of tobacco, snuff, or cigars, or to persons who purchased leaf tobacco for export. This, in effect, was a prohibitory tax against the sale of leaf tobacco at retail directly to consumers. This act was amended by act of March 3, 1883, only so far as it imposed a special tax and provided that retail dealers should pay annually a special tax of $250 and 30 cents for each dollar on amount of their monthly sales in excess of $500 per annum. It was provided, however, that farmers and producers of tobacco could sell, at place of production, tobacco of their own growth or raising at retail directly to consumers to an amount not exceeding $100 annually. This was also, in effect, a prohibitory tax against the sale of leaf tobacco to consumers.

The special-tax provision was repealed by section 26, act of October 1, 1890. This act, section 27, made it the duty of the farmer to furnish a statement of his sales of leaf tobacco, with the name and residence of the person to whom sold, and the previous limitations on sales were continued although the special tax had been repealed.

The act of August 28, 1894, repealed the former act requiring farmers to make a sworn statement of their sales, and since that time farmers and growers of tobacco have been privileged to sell leaf tobacco of their own growth and raising, and that received from tenants as rent for their land, without restriction as to the quantity sold, place of sale, or the business of the persons who purchase the tobacco.

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From the foregoing premises, I am constrained to answer your questions categorically, as follows:

1. That Congress has never imposed a tax on natural leaf tobacco in the hands of farmers, but only upon leaf tobacco which they may have sold directly to consumers.

2. Under the present law a tax of six cents per pound is imposed upon all tobacco stemmed or twisted by a farmer not intended for his own personal use.

3. A farmer may stem and twist tobacco for his own use without incurring liability to tax on such tobacco.

4. Stemming or twisting tobacco is regarded as manufacturing, and a grower or planter can not lawfully stem or twist his tobacco for sale, or for the purpose of giving it away, without payment of tax. If he should engage in that business he would be regarded as a manufacturer of tobacco and be required to qualify as such by registering with the collector of the district, filing statement and bond, and to pack, label, and stamp his product, as provided by regulations No. 8, pages 5 and 6.

5. I have already given you the legislative definition of the term "dealer in tobacco."

6. My answer to question 4 is an answer to question 7.

7. The term "manufacturer of tobacco" is defined in the first and second paragraphs of section 69, quoted hereinbefore.

Respectfully, J. W. YERKES, *Commissioner.*

(636.)

Reworking tax-paid tobacco.

Unmerchantable tax-paid plug and twist tobacco may be received at a tobacco factory and accounted for as "material in process of manufacture" and reworked into smoking and other taxable tobacco, the new product to be repacked in new packages and restamped without any allowance for the value of stamps first affixed to the original packages containing the manufactured plug or twist tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 12, 1903.

GENTLEMEN: You ask in your letter, dated 6th instant, whether you could lawfully purchase from a wholesale firm in your city some unsalable damaged plug and twist tobacco and rework the same into smoking tobacco which would be repacked and restamped at your factory.

In reply, you are informed that unmerchantable manufactured tobacco and snuff may be returned to the factory and reworked and accounted for at its actual weight and as "material in process of

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manufacture," and that the stamps affixed to the emptied packages must be destroyed, nor can the original boxes be used for packing tobacco again.

Your company will be required to account in manufactured smoking tobacco, at least pound for pound, for the quantity of manufactured plug and twist tobacco received at the factory without credit for any alleged loss in manufacturing. The new product must be repacked in new boxes and restamped without allowance being made for the value of the stamps first used in payment of the tax on the manufactured plug or twist tobacco, and which were destroyed after the boxes were emptied.

The regulations, No. 8, page 32, anticipate the reworking of unsalable manufactured tobacco or snuff returned to the factory. It is immaterial that the unsalable tax-paid tobacco was the product of another factory, but the stamps affixed to the packages must be destroyed immediately upon receipt of the tobacco at the factory and the tobacco must be removed from the packages at once and proper charges made therefor as tobacco in process of manufacture received at the factory.

Respectfully, J. W. YERKES, *Commissioner.*

——— ———.

(637.)

Playing cards.

Playing cards, with certain advertising matter on the back of each card subject to stamp tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1903.

SIR: Your letter of the 9th instant has been received, concerning a person in your district "who proposes to manufacture playing cards for general advertising purposes, printing upon both the face and the back of each card certain advertising matter, which it is claimed will render the cards unsuitable for use as playing cards."

It is held that notwithstanding the advertisement printed on these cards they are still subject to the stamp tax. There is no provision of the statute imposing tax on playing cards that warrants a different ruling.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. FRANK MCCORD,
Collector Eighteenth District, Cleveland, Ohio.

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(638.)

Legacy tax—Beneficial interest.

Estates left in trust, the income payable to a beneficiary during life and the remainder to the children of the life tenant, are vested in the children who are living at the decease of the testator, subject, however, to open and let in all those who may be born thereafter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1903.

To collectors of internal revenue and others:

The following decision is published for the information and guidance of all concerned:

SIR: Your letter of the 4th instant has been received and the inclosed copy of the will of the late ——— has been carefully considered.

It appears that a trust fund of $300,000 is created by the provisions of the will in one-third of which each of the three daughters has a life interest, and upon the death of a life tenant the remainder of the principal sum from which she received the income will be equally divided among her issue. This office holds that the children, if any, of the life tenants, who were living at the date of the death of the testator, have a vested right in the remainder of the fund set aside for the parent.

If there is an ascertained person who would be entitled to take the remainder, should the particular estate determine, the remainder is vested. (Hopkins, 290.)

It is not the uncertainty of enjoyment in the future, but the uncertainty of the *right* to that enjoyment which makes the difference between a vested and a contingent interest. (Kent.)

While there is no doubt that the beneficial interests referred to are vested in the children of the life tenants that were living when the testator died, yet it is not possible to now assess the tax due because the present value of the interest that will finally pass to a remainderman is not subject to an exact arithmetical computation. No matter what physical conditions may exist relative to the life tenants, this office can not assume, while the life tenants are alive, that no other issue will be born; hence the value of the interest and the rate of tax can not now be determined.

I give to my sons for the term of ten years after my decease the improvement and income of my tavern, farm, etc. Item: I give and devise to my grandchildren the sons and daughters of my said sons after the expiration of ten years from my decease all those lands ——— to have and to hold to their heirs and assigns forever.

It was held that this created a vested remainder in the grandchildren who were living at the decease of the testator, subject, however, to open and let in all those who might be born afterwards; the share of a grandchild who was living at the decease of the testator,

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but died before the expiration of the particular estate, descended to his father as his heir. (Ballard *v.* Ballard, 18 Pick., 41.)

This office holds that the children of the three life tenants who were living at the decease of the testator have a vested right in the remainder, and that when these remaindermen come into actual possession of the same the interests will be subject to a legacy tax, if the value to a beneficiary exceeds $10,000.

J. W. YERKES, *Commissioner.*

(639.)

Special tax—Institute furnishing whisky to patients.

An institute exempt from special tax as liquor dealer, when the whisky administered to patients is combined with medicinal ingredients.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1903.

SIR: Your letter of the 10th instant has been received, referring to Revenue Agent McCoy's letter of the 8th instant, reporting the liability of the ——— institute to special tax as a retail liquor dealer.

You transmit an affidavit made by one of the officers and proprietors of the ——— institute, wherein he says:

That said ——— institute is a hospital maintained and used for the purpose of treating persons addicted to the use of intoxicating liquors; that in said treatment whisky is combined with other medicinal properties, and as so combined is used as a treatment administered to said persons so addicted to the use of intoxicants.

Upon these facts, this institute has not involved itself in special-tax liability as a retail liquor dealer, being exempt therefrom under the ruling of this office in view of the provisions of section 3246, Revised Statutes, relating to the use of distilled spirits or wines in the preparation or making up of medicine.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. F. VON BAUMBACH,
Collector Internal Revenue, St. Paul, Minn.

(640.)

Rectifiers.

It is not necessary for a person qualifying as rectifier, for the sole purpose of rectifying for other persons, to qualify as wholesale liquor dealer.—How book Form 52 should be kept.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1903.

SIR: Your letter of the 11th instant has been received, wherein you ask—

If a person qualifies as a rectifier for the sole purpose of rectifying spirits for other persons, is it also necessary for him to qualify as a wholesale liquor dealer?

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It is not, if he neither sells nor offers for sale distilled spirits or wine or any compound thereof, but confines himself strictly to rectifying spirits or wine belonging to other persons and, after completion of the rectification, sends out these rectified liquors to the owners in the prescribed packages bearing proper stamp, marks, and brands. He must, however, keep the book Form 52, and make careful entries therein of the packages of spirits received by him for rectification, stating "the date when, the name of the person or firm from whom, and the place whence the spirits were received," and, upon sending out these rectified spirits, "enter in like manner in said book the day when and the name and place of business of the person or firm to whom such spirits are to be sent," etc., in strict compliance with section 3318, Revised Statutes, as amended.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. E. B. STEPHENSON,
Collector Internal Revenue, Omaha, Nebr.

(641.)

Renovated butter.

As to enforcement of the portion of regulations, No. 9, revised June, 1902, prescribed by the Secretary of Agriculture, relating to the manner of sale by dealers, being paragraphs 16 to 20, inclusive.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1903.

SIR: Yours of the 6th instant, in regard to the embarrassment suffered by you in the enforcement of the regulations concerning renovated butter, was duly received. You state that, owing to a misunderstanding of our regulations, dealers have been making up their own packages and disposing of them without adopting any method of identifying the contents as having been taken from stamped packages, or without identifying the contents when produced prior to July 1, 1902.

Concerning this latter point, you are advised that, as renovated butter produced prior to July 1, 1902, is not taxable, internal-revenue officers need only to reasonably assure themselves as to the fact of production prior to July 1, 1902. As all such butter is either now in, or recently from, cold storage, it will be easy for the officers to ascertain the date of entry into cold storage.

As to the practice of dealers of disposing of renovated butter taken from stamped packages without marking the parcels "Renovated butter," you are advised that internal-revenue officers should be governed by the instructions of this office dated February 9, 1902 (ruling

625, T. D., vol. 6), and in such cases notify the Secretary of Agriculture, whose officers are charged with the duty of enforcing the regulations, No. 9, revised June, 1902, supplement No. 1, paragraphs 16 to 22, inclusive, sending a copy of their report to the collector and to this office.

The internal-revenue force is charged with the duty of enforcing the balance of the regulations—that is to say, as to properly stamping and marking packages, payment of special taxes by manufacturers, and the keeping of books and making returns by the manufacturers.

It is desired that it should be understood that prosecutions or other action for the enforcement of the portion of the regulations prescribed by the Secretary of Agriculture are under the authority of that officer, and internal-revenue officers are not responsible therefor, as this office lacks lawful power with respect to violations of said portion of the regulations.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. W. FRANK KINNEY,
Collector Internal Revenue, Hartford, Conn.

(642.)

Compromise cases.

Offers of compromise should include payment of costs.—Costs should be deposited in advance.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1903.

To collectors of internal revenue:

It is a condition precedent to the consideration of offers in compromise of cases in suit, and in those cases where preliminary proceedings have been taken before a United States commissioner, that moneys sufficient to pay the costs incurred be deposited. (See Regs., series 7, No. 12, revised Jan. 31, 1900, p. 33.)

Collectors will be careful to see that this requirement is strictly observed.

Offers should be made to include payment of costs. This course is necessary in order to prevent any misunderstanding in the matter of their payment and to prevent delay in the settlement of cases.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

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(643.)

Special tax—Sale of a conditional warehouse certificate.

Special tax is not required to be paid for the sale at any place of a warehouse certificate containing a condition in regard to payment of the purchase money, if this condition is complied with by the payment, in whole or in part, of the purchase money at the place of business of the seller where he holds the requisite special-tax stamp as a wholesale liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 21, 1903.

To collectors of internal revenue and others:

The appended decision is published for the information and guidance of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1903.

SIR: Your letter of the 18th ultimo has been received, inclosing a form of warehouse certificate for whisky in bond, and inquiring whether the special tax of a wholesale liquor dealer is required to be paid for the transfer and delivery of such certificate, in view of the fact, to which you call attention, that such "purchase clause receipt is an entirely different form of document" from "the regular form of negotiable warehouse receipt issued by Kentucky distillers."

By reference to ruling No. 18940, in TREASURY DECISIONS, 1898 (vol. 1, pp. 219 and 220), you will see that it was held that where warehouse certificates for whisky in bond contain conditions and stipulations which must be complied with at some future time and place before the purchaser can become entitled to the ownership and possession (either constructive or actual) of the packages described therein, the transfer and delivery of such warehouse certificates do not necessitate the payment of special tax under the internal-revenue laws. But this does not apply to cases in which the purchasers of the warehouse certificates comply with the conditions by payment of the purchase money elsewhere than at the place of business of the vender where the latter holds the special-tax stamp of a wholesale liquor dealer. In such cases the sales are completed at places where the requisite special-tax stamp is not held, and the vender thereby becomes involved in special-tax liability at each of these places of sale. This is the purport of my ruling (No. 300, in TREASURY DECISIONS, 1901, vol. 4, p. 44) in answer to a letter from Revenue Agent McCoy, dated March 7, 1901. In that letter Mr. McCoy said:

"It has been very clearly shown * * * by both seller and purchaser that the conditional clause has no reference to any other claim except the purchase price, and it would seem that if a man buys one of these certificates on eight months time, but discounts his notes and pays for it in thirty days and carries the whisky in bond, the seller having no further interest in it, that it is an absolute sale of the whisky covered by the certificate, and the seller would incur special-tax liability."

He is correct in this view, if the payment by the purchaser (whereby he becomes entitled to the packages of whisky described in the certificate) is not made at the place of business of the vender where the requisite special-tax stamp is held.

In connection herewith you submit a form so-called "purchase clause receipt for whisky," and ask whether there is any special-tax liability.

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"First. In a case where the purchase clause warehouse receipt was sold and delivered in the place of business of the purchaser, and a partial payment made at the time of delivery, the balance of the purchase money to be thereafter paid at the home office of the seller.

"Second. In a case where the warehouse receipt was sold and delivered in the place of business of the buyer, but *no* payment made at the time on account, the *entire* purchase price to be thereafter paid at the home office of the seller."

If, in the first case, the remainder of the purchase money is paid at the home office of the seller where he holds the requisite special-tax stamp of a wholesale liquor dealer, in my opinion the sale of the packages of whisky specified in the warehouse receipt is completed at that office and is covered by the special-tax stamp held there, and the seller is not involved in special-tax liability by reason of the fact that he or his salesman delivered the warehouse receipt elsewhere to the purchaser. In the second case presented the same ruling, of course, also applies.

Respectfully, J. W. YERKES, *Commissioner*

To ——— ———.

(644.)

Stamp tax—Payment of documentary stamp taxes accrued under repealed law.

Collectors must satisfy themselves that instruments are not to be validated under section 13 of the war-revenue act before reporting the tax for assessment.—Form 1 the only evidence of payment to be given when taxes are assessed, and stamps to be issued only when instrument is validated.—Treasury decision 554 modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 25, 1903.

SIR: Your letter of the 18th instant, relative to the assessment against ——— ———, on your February, 1903, list, amounting to $3.80 on account of tax due on certificates of stock issued during the operation of the act of June 13, 1898, has been received.

You state that the assessment has been paid and the proper credit has been given on the list. The certificates have also been transmitted to you in order that they may be made to show that the taxes due thereon have been paid.

You are advised that if parties desire the instruments themselves to show the payment of the tax the only method by which this can be done is set forth in Treasury decision 545, July 8, 1902, where, under the provisions of section 13 of the war-revenue act as amended by act of March 2, 1901, they "shall appear before the collector of internal revenue, who shall, upon the payment of the price of the necessary stamps, affix the stamps and duly note the date of affixing and payment of penalty on the margin of the instrument."

No documentary stamps will be issued except when documents are to be validated as stated above.

Collectors should be careful to satisfy themselves that no stamps

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are to be issued before reporting taxes for assessment, in order that no duplicate charges may arise.

It appears that the parties in question do not insist upon the issue of stamps, indicating the tax due, to be affixed to the documents in question, and it is presumed that you were aware of this fact before you reported the tax for assessment in accordance with the instructions in Treasury decision 554, dated July 18, 1902.

In cases where assessments are made, Form 1 is the only evidence showing the payment of the tax that can be properly furnished.

Treasury decision 554 is hereby modified so far as it conflicts with these instructions.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. E. C. DUNCAN, *Fourth District, Raleigh, N. C.*

(645.)

Special tax and penalty—Waiver.

Where special tax with penalty due is discovered too late for assessment, the delinquent can secure relief from the 50 per cent penalty by making sworn return, with waiver of the statutory limitation of fifteen months for assessment. If he refuses to make such return with waiver, both the tax and penalty are recoverable by suit, and he is also liable to criminal prosecution, and should be reported accordingly by the collector under section 3164, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 28, 1903.

SIR: In reply to your letter of the 21st instant, you are hereby advised that where it is found in the case of any person, after the lapse of fifteen months from the date of the receipt by you of a list upon which assessment might have been made, that he has involved himself in liability for special tax and penalty, there can be no assessment of this tax and penalty in view of the statutory limitation. But under the long-settled ruling any person by making waiver of this limitation and paying the amount of the tax can secure relief from the 50 per cent penalty, and the tax only will be assessed. If in any such case the person liable refuses to make the waiver and thus avail himself of the opportunity of obtaining relief from the penalty, the whole amount (tax and penalty) is recoverable by suit, and he is also liable to criminal prosecution, and the facts should accordingly be reported by the collector to the United States district attorney under section 3164, Revised Statutes.

In every case in which, upon receipt from a revenue agent of a report of such liability against any person, the collector is of opinion that the facts reported are not sufficient to establish liability, he

should so state in a letter to this office, and assessment on the report will be postponed until the question of liability shall have been decided.

There is no such thing as "technical liability" for special tax, as you suggest, where the facts in the case clearly show that the tax is due under the law and the rulings. In every such case the suggestion of technical liability should be made with reference to the criminal liability of the person who has failed to make return and pay the special tax due within the calendar month of his liability, and not with reference to the tax.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. G. MONAHAN, *Collector Second District, Madison, Wis.*

(646.)

Fermented liquors—Special tax.

A person manufacturing for sale a fermented liquor made from a substitute for malt must qualify as brewer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 31, 1903.

SIR: Your letter of the 25th instant has been received, inclosing a letter relating to what is called "a tonic * * * produced by the fermentation of molasses, hops, sugar, and wheat bran," to which "a few cakes of compressed yeast are added," and "the material is allowed to ferment for about twelve hours."

This is held to be a fermented liquor made from a substitute for malt, within the meaning of the first subdivision of section 3244, Revised Statutes; and, therefore, the person who manufactures it for sale is required to qualify and pay special tax as a brewer, and also special tax as a malt liquor dealer for selling this beer in bottles.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. P. G. RENNICK, *Collector Fifth District, Peoria, Ill.*

(647.)

Distilled spirits—Imitation stamps.

Circular letter relative to caution labels on packages of distilled spirits, in similitude of or having the resemblance or general appearance of an internal-revenue stamp, calling attention to circular 638.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 3, 1903.

To collectors and all officers of internal revenue:

In the matter of "caution notices" and similar devices used ' wholesale liquor dealers and rectifiers on the stamp heads of sin

stamped spirits, it is found that circular 638, dated December 17, 1902, which was intended to be a conclusive statement of the attitude of this office upon the subject-matter, has not stopped the submission of samples of such devices, in infinite variety, for approval. It is, therefore, deemed necessary to give notice that this office will not occupy itself with examining for approval or disapproval samples of devices intended to be used on packages of spirits.

The law governing the matter (sec. 3316*a*, Rev. Stat., amended) and circular 638 ought not to require further elaboration. The circular sufficiently states the construction of the law by this office. Wholesale liquor dealers and rectifiers who, in good faith, wish to use a device as a label or trade-mark, know how the possibility of interference with their property by internal-revenue officers may be obviated. Compliance with the law and the regulation is easy to the dealer who wishes to use a device for legitimate trade purposes. Such as wish to use a device, however, as nearly like a spirits stamp as may be, without incurring the penalties of the law, will get no aid from this office.

J. W. YERKES, *Commissioner.*

(648.)

Cancellation of bonds.

Bonds of manufacturers of tobacco and cigars, and of brewers who have gone out of business. No provision for their cancellation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 4, 1903.

SIR: Your letter of the 30th ultimo, in regard to canceling bonds of manufacturers of tobacco and cigars, and of brewers after they have gone out of business, has been received.

In reply, you are informed that there is no provision for canceling these bonds or discharging the liability of the surety. The bonds are to be kept on file in the collector's office, and, should any default be thereafter discovered, they are held liable.

In regard to brewers' bonds, the law provides that a brewer shall execute a new bond once in four years, and whenever required by the collector, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval by the collector.

Respectfully, J. W. YERKES, *Commissioner.*

'r. JAMES G. MONAHAN, *Collector Second District, Madison, Wis.*

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(649.)

Instructions as to manner in which wholesale dealers in oleomargarine shall report receipt of sample packages and disposition made thereof.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 6, 1903.

To collectors of internal revenue:

The following ruling in regard to the manner in which wholesale dealers shall report receipt and disposition made of *sample packages* of oleomargarine is hereby promulgated:

Wholesale dealers in reporting on their monthly Form 217 *sample packages* of oleomargarine should show, under the heading "Statement of quantity received during the month," such packages in a separate entry, and such entries should appear on the page devoted to receipts, in the same manner as any other shipment. Care should be taken in making reports of such receipts, so that the nature of the same may be clearly set forth.

Similarly, when oleomargarine in sample packages is disposed of in any way, the details of such transactions should be given in the body of the report under the heading "Statement of quantity disposed of during the month," in the same manner as other shipments are shown.

The recapitulation should show all *sample packages* received by the wholesale dealer, and credit should be taken for such oleomagarine disposed of.

All wholesale dealers should be informed that they must conform to the above requirements, and their reports should be examined to see that they are prepared in accordance with this instruction, and in case they do not they should be amended to agree with the same before being forwarded to this office.

J. W. YERKES, *Commissioner.*

(650.)

Instructions to collectors of internal revenue respecting distillers' annual notices and bonds for May 1, next.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 6, 1903.

To collectors of internal revenue:

Your attention is directed to the fact that the rights of distillers, under their present bonds, cease with the 30th instant, and those

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desiring to continue business after that date must give new notices and execute new bonds. These papers should be prepared and submitted a sufficient time in advance of the 1st of May to enable you to make the necessary investigations before approving the bonds. In no case should a bond intended for the new bonded year be approved before the 1st of May.

You will call attention to appropriate portions of the regulations and give such directions as will facilitate the correct preparation and execution of these annual notices and bonds. These papers should be carefully examined before they are approved and copies forwarded to this office.

The fact that collectors are empowered to refuse to approve distillers' bonds in certain cases should not be overlooked.

Where distilleries are under suspension and so continue on and after the date of approval of the new bonds, notices of continued suspension bearing even date with the approval of the bonds must be filed.

J. W. YERKES, *Commissioner.*

(651.)

Packing cigarettes.

Cigarettes and small cigars, weighing not more than 3 pounds per thousand, must be put up in boxes containing 10, 20, 50, or 100 cigarettes each, and each box must be properly stamped.—The caution-notice label and brands must appear on the carton in which small stamped packages are repacked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 8, 1903.

GENTLEMEN: Replying to your letter, dated 3d instant, you are informed that all cigarettes and small cigars, weighing not more than 3 pounds per thousand, must be put up in boxes containing 10, 20, 50, or 100 small cigars or cigarettes each, and each small box must be properly stamped, and in such manner as to seal the package, and if not so applied, it must be canceled by the factory number and date of use being printed thereon. If such stamped boxes are repacked in pasteboard boxes or cartons containing 100, 200, 250, or 500 cigarettes, the caution-notice label must appear upon the larger box or carton, which must also be branded to show the factory number, the number of the district and State and the aggregate number of cigars or cigarettes contained therein and upon which tax is paid, as provided by the regulations, No. 8 (p. 54), and when such cartons are so labeled and branded it is not necessary for the small stamped packages containing 10, 20, 50, or 100 cigarettes or small cigars to be either labeled or branded.

Respectfully, J. W. YERKES, *Commissioner.*

WELLS-WHITEHEAD TOBACCO COMPANY, *Wilson, N. C.*

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(652.)

Organization of collection districts for fiscal year beginning July 1, 1903.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 8, 1903.

To collectors of internal revenue:

For the purpose of perfecting the organization of the several districts for the coming fiscal year, it is desired that you confer at the earliest date practicable with the revenue agent in charge of the division embracing your district, and agree, if possible, with him in regard to the number of persons that should be employed next year both in your office and on the field force, forwarding the result of such conference to this office on Form 240 with statement of your organization on the date of said report on Form 204.

You are directed to limit your recommendations for the coming year to such force as may be absolutely necessary for a prompt and proper prosecution of the public business.

In this connection, you are advised that the appropriation for the collection of internal revenue for the fiscal year ending June 30, 1904, is materially less than that provided for the present fiscal year. Especially is this the case in regard to employees paid from the appropriation known as the "war" appropriation.

The heavy diminution of the amount allowed in this appropriation as compared with the present year will make it absolutely necessary to reduce the number of employees paid therefrom. Therefore, the principal allowance that will be made to collectors will necessarily be charged to the "regular" appropriation. These facts should be borne in mind in the preparation of estimates.

J. W. YERKES, *Commissioner.*

(653.)

Suit on collector's bond.

Decision of the United States circuit court of appeals in an action on the official bond of Ambrose W. Lyman, collector, to recover the sum of $8,282.98 found due the United States on settling his accounts.—The objection to transcript certified by the Acting Secretary of the Treasury not valid.—The change in the regulations subsequent to the execution of the bond, putting deputy collectors in the classified civil service, did not relieve the sureties on the bond from their liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 15, 1903.

To collectors of internal revenue and others:

The appended decision of the United States circuit court of appeals, southern district of New York, is published for the information of all concerned

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

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UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

William M. Laffan, impleaded with others, plaintiff in error, v. *United States, defendant in error.*

Before LACOMBE and COXE, Circuit Judges.

STATEMENT.

This cause comes here upon writ of error to review a judgment of the circuit court, southern district of New York, entered upon a verdict directed in favor of defendant in error who was plaintiff below. The action was brought against defendant impleaded with co-sureties and a former collector of internal revenues for the district of Montana, Ambrose W. Lyman, now deceased, to recover $8,232.98 public moneys unaccounted for by the said Lyman and alleged to have been taken by Lyman's deputy collector, one Cabell. When the action came on for trial the complaint was dismissed as to the others on the ground that at the time of the commencement of the action they were not residents of the southern district of New York, and the court had no jurisdiction as against them. Judgment was entered against Laffan only.

LACOMBE, *circuit judge:*

It is contended that the trial court erred in admitting in evidence a certified copy of the bond upon which the action was brought, because said copy was not properly certified. The United States Revised Statutes provide:

"SEC. 886. When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the Register, or by such Auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided,* That where suit is brought upon a bond or other sealed instrument, and the defendant pleads '*non est factum,*' or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract or other paper specified in such affidavit."

This section was amended by the act of March 2, 1895 (c. 177, sec. 10), as follows:

"The transcripts from the books and proceedings of the Department of the Treasury and the copies of bonds, contracts and other papers provided for in section eight hundred and eighty-six of the Revised Statutes shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department."

In the case at bar, the form of the certificate to copy of the bond is not criticised. Its attestation reads:

"In witness whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

"[SEAL.] O. L. SPAULDING, *Acting Secretary of the Treasury.*"

The objection raised to the admission in evidence of the document thus certified is that "the statute requires it should be certified by the Secretary or Assistant Secretary

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of the Treasury, and it is certified by an alleged Acting Secretary of the Treasury, who is not the Secretary or an Assistant."

This objection is disposed of by the opinion of the Supreme Court in New York and Maryland Railroad *v.* Winans, where the court held:

"The objection taken to the patent, that it is signed by an 'acting commissioner of patents,' and that the record contains no averment or proof of his title to the office, is not tenable. The court will take notice judicially of the persons who, from time to time, preside over the patent office, whether permanently or transiently, and the production of their commission is not necessary to support their official acts." (17 How., 40.)

It is further contended on the brief that the bond is not the one provided for by the statute (sec. 3148, U. S. Rev. Stat.) in that it guarantees the faithful discharge of their duties by all the deputies appointed by the collector, whereas the statute only requires a bond for the faithful performance of the collector's own duties and a faithful accounting by him for all public moneys which may come into his hands. This point was not pressed in oral argument, and we assume it has been abandoned. It is clearly unsound. (United States *v.* Hodson, 10 Wall., 395; Jessup *v.* United States, 106 U. S., 147.)

The transcript from the books and proceedings of the Treasury Department which, under section 886 (*supra*), was put in evidence to prove the delinquency of the collector was also certified by the Acting Treasurer. It was further objected to its admission that it "failed to show any breech of the bond." Inasmuch as it showed that on the accounting of June 21, 1897, there was a balance due the United States of $8,380.68 and that on the accounting of October 21, 1897, a credit item reduced that balance to $8,232.93, this objection seems wholly unsound. The circumstance that above the signature of the certifying auditor there appear two sets of initials, apparently of the clerks who made up the statement, is wholly immaterial. The statement of account does not contain any items indicating that the accounting officers had exercised any judicial function by determining that some particular item was "illegally claimed" or "illegally retained," as in United States *v.* Case 47 (Fed. Rep., 270). It is a plain bookkeeper's statement of account, correctly certified under the statute, and was *prima facie* evidence that Lyman had failed to turn over public moneys or to account for public property (revenue stamps) to the amount claimed.

It is contended finally that a change in the law subsequent to the execution of the bond released the sureties, upon the ground that such change increased the liability of the collector by exposing him to additional risk of loss through the improper acts of others committed without his fault or knowledge. The bond was given in 1894. At that time there were a certain number of deputy collectors who in the performance of their duties came into the possession of public moneys, which it was their duty to turn over to the collector or directly to the United States. For the faithful return of all such moneys by his deputies the collector was himself responsible to the Government, and, as we have seen, the bond expressly covered such responsibility. Manifestly it was most important—it might, indeed, become vitally necessary for his own protection—that he should have the power of selection of the men for whose faithfulness in handling public moneys he was to be held responsible, and should also have the power of removal. When the bond was given he had both these powers. He appointed the deputies, having thus full opportunity to make such careful inquiry as he might desire into their past history and into their reputation for integrity. Despite the most careful inquiry, however, mistakes were possible. When the collector became satisfied that he had made such a mistake he had full power to dismiss any of the deputies whom he had grown to distrust without being required to defend his action in so doing or without the necessity even of assigning any cause.

When the bond was executed deputy collectors of internal revenue were not in the classified civil service. They were included therein, apparently in November, 1896—

the regulations are printed in the record in such disjointed shape that it is very difficult to determine. The regulations were also amended by adding the following:

"No removal shall be made from any position subject to competitive examination except for just cause, and upon written charges filed with the head of the department or other appointing officer, and of which the accused shall have full notice and an opportunity to make defense."

It is forcibly contended that this change greatly increased the collector's risk, and in consequence the risk of his sureties. It might very well be that conversation or association with one of his deputies might lead a reasonably prudent collector to such a conviction of his untrustworthiness as would call for his immediate dismissal, although there might be no specific act which could be made the basis of "charges." Or the collector might learn of some event in the deputy's past history, which would make it unsafe to keep him, although it might not be good cause for removal under the amended regulations. Before amendment the collector would have an opportunity of protecting himself which he would not have afterwards, and for that reason it is contended that the risk of the sureties has been increased to such an extent as to make the bond void. The indebtedness of Lyman for which this suit is brought arose by reason of the embezzlement and defalcation of one Cabell, a deputy collector appointed by Lyman.

The effect of such change on the liability of sureties is a question which has been argued by both sides orally and in the briefs. An extended investigation of the authorities, including many not cited by either side, indicates that the question is a very interesting one, to which it might be difficult to find an answer that would harmonize with all the authorities. That investigation, however, has proved to be merely an excursion into the realms of academic law. No such question is presented by the record, and it would have saved this court some time, which might have been more usefully employed, if counsel on one side or the other had examined the record sufficiently to discover precisely what is before the court. As was said before, the excerpts from the civil-service regulations are so printed that it is not possible to determine the dates of the promulgation of some of the quoted sections. By written stipulation, however, it is agreed that the amendment which made deputy collectors (and others) irremovable except for just cause, upon written charges, was adopted on July 27, 1897. The transcript of account shows that the loss entailed by the embezzlement of Cabell had already accrued, for Lyman was found indebted to the United States in the amount of $8,880.68 on the accounting of June 17, 1897, and between that date and final accounting, October 21, 1897, nothing is charged against him, the only entry on either side being a credit to him for $147.75 cash deposited with the Treasury Department.

The judgment is affirmed.

(654.)

Renovated butter—Construction of paragraph 22, regulations No. 9, supplement No. 1.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 15, 1903.

To collectors of internal revenue and others concerned:

The appended ruling by the honorable Secretary of Agriculture is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

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DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY,
Washington, D. C., April 11, 1903.

GENTLEMEN: Your letter dated the 3d instant, and addressed to Collector Nowlin, of the sixth United States internal-revenue district of Indiana, has been received by me through reference from the Treasury Department.

Renovated butter is prepared for market by the manufacturers, under regulations duly prescribed in accordance with law, and promulgated jointly by the Treasury Department and this Department. The rules providing for all branding and marking of this commodity, with the exception of the United States tax stamp, are under the supervision of this Department. These rules contemplate such markings upon renovated butter as will insure its commercial identity, for the benefit of all purchasers and consumers. All the marking done by Government regulations is protected by law from being removed, altered, or defaced. The indented branding upon the surface of the butter itself is in accordance with the law, and is regarded as one of the most importance of the identifying marks, and to be especially protected. This marking or branding can not be preserved without altering or defacing if the contents of the original manufacturers' package of renovated butter packed in solid form is emptied or disturbed in any way. Hence the necessity for rule 22 of the regulations and for its strict enforcement.

The last rule named, to which your attention is invited, can not be changed or modified without establishing a precedent which would defeat the purpose of the regulations regarding identifying marks. The only safe course is to insist that jobbers and wholesalers shall handle renovated butter only in the original manufacturers' packages, and dispose of it without breaking those packages for any purpose or in any way changing the form and markings. For this reason it is impossible to consent to your proposition for emptying factory packages for the purpose of wiring, while moving in trade between the factory and the retailer.

It is felt that there is nothing oppressive in this ruling and no obstacle to trade, because the regulations expressly provide that manufacturers may pack renovated butter in almost any form or style of package from one-half pound weight upward. All the dealers need to do is to call upón the supply factories for the product to be packed in a form to suit their trade and their customers. You will have no difficulty whatever in obtaining renovated butter in a great variety of shape and size of package, so as to be able to fully satisfy the demands of your customers. The simplest, safest, and most economical course for you to pursue, therefore, is to order renovated butter from the factory supplying you in such shape as will meet the wants of your trade, and enable you to sell it and ship it in exactly the condition in which it is received. In this way rule 22 and all other existing regulations, may be fully complied with, as well as the interests and convenience of all concerned.

Very truly, yours, JAMES WILSON, *Secretary.*

To ——— ———.

(655.)

Special tax—Retail liquor dealer receiving wholesale order.

A person holding a special-tax stamp only as a retail liquor dealer is not entitled to accept any order for a quantity of alcoholic liquor amounting to 5 gallons or more, even though he fills the order by shipping from time to time less than 5 gallons.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 15, 1903.

SIR: Your letter of the 9th instant has been received, submitting an inquiry by a retail liquor dealer as to whether, if he receives an

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order for 20 gallons of spirits, the order being accompanied by an amount, either draft or currency, sufficient to cover cost of the entire 20 gallons, he is permitted to fill this order, shipping packages containing less than 5 gallons from day to day until the order is filled.

He can not do so without involving himself in special-tax liability as a wholesale liquor dealer. As a retail liquor dealer only, he is not entitled to accept any order for a quantity of distilled spirits amounting to 5 gallons or more, even though he fills the order from time to time by shipping less than 5 gallons. He must have a separate order for each quantity of less than 5 gallons sold and shipped by him.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. BEN WESTHUS, *Collector First District, St. Louis, Mo.*

(656.)

Special-tax stamps for the special-tax year ending June 30, 1904.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 16, 1903.

To collectors of internal revenue:

1. Immediately on receipt of this circular, collectors will make out and transmit to this office requisitions on Form 100 (revised 1902) for special-tax stamps for the special-tax year commencing July 1, 1903, and ending June 30, 1904.

2. In no case will stamps be issued to a collector in excess of an estimated three months' supply.

3. These stamps will be denominated "Series 1903," and requisitions therefor should have *this denomination* distinctly indorsed thereon.

4. Collectors in ordering special-tax stamps should base their estimates of the quantity they will need upon the number of each kind issued by them during the *first three months* of the current year, but in no case should less than *one book* of any denomination be ordered.

5. Collectors will insert, in red ink, in the left-hand column of Form 100 (revised 1902), on which requisitions are made, directly opposite the number of stamps of each kind ordered, the number of whole books of such stamps, "Series 1902," in their hands on the day requisitions are forwarded to this office.

6. Collectors will not issue special-tax stamps for the special-tax year ending June 30, 1904, until Form 11, properly filled out, and the money for the stamps have been received; and the stamps *must be issued in consecutive order*, the dates upon the stubs so indicating.

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7. On June 30, 1903, collectors will return to this office all special-tax stamps of the series of 1902, and all coupons and stubs of such stamps remaining in their hands, reporting them on line 10 of Form 68 for June as "in transitu" June 30, 1903. Collectors are informed that this instruction is mandatory; that no excuse for not complying with the same will be accepted, but that in every case where a collector for any reason shall fail to comply herewith he will be required to forward amended Form 68, on which such stamps and coupons returned must be reported as "in transitu" June 30, 1903.

8. When special taxes are collected for other than the current year, the collector will issue stamps of "Series 1903," writing across the face thereof, and also across the stubs, in red ink, "issued ———, ———, for the last ——— months of the special-tax year ending June 30, 1——," signing the same in his official capacity.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(657.)

Oleomargarine.

Sales of oleomargarine for "ship stores" to vessels in ports of this country sailing for foreign ports can not be made free of tax as for export, but must be tax paid and stamped as are goods for domestic use.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 23, 1903.

GENTLEMEN: Your letter of the 20th instant, in which you ask to be informed "if oleomargarine sold for export to be used as 'ship stores' on vessels sailing for foreign ports can be shipped without stamps, and under the same condition as 'oleomargarine for export,' as per section 16, act of August 2, 1886," is received.

The section above referred to provides—

That oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin or other package containing such article the word "oleomargarine," in plain roman letters not less than one-half inch square.

This office construes the said section to mean that to export oleomargarine free of tax both the constructive (by receipt of invoice or bill of sale by the consignee) and the actual delivery of the goods must be made in a foreign country. Such would not be the case, however, where the sales and deliveries are made to vessels in ports of this country, although sailing for foreign ports, and, therefore,

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oleomargarine can not be sold to such vessels without payment of the tax due and affixing stamps as on the product for domestic use.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———.

(658.)

Transfer of Chinese records and papers to Department of Commerce and Labor.

Records and papers relative to Chinese to be transferred from the offices of collectors of internal revenue to the Commissioner-General of Immigration on July 1, 1903.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 5, 1903.

To collectors of internal revenue:

The act of Congress entitled "An Act to establish the Department of Commerce and Labor," approved February 14, 1903, provides—

That the authority, power and jurisdiction now possessed and exercised by the Secretary of the Treasury, by virtue of any law in relation to the exclusion from and the residence within the United States, its territories, and the District of Columbia, of Chinese and persons of Chinese descent, are hereby transferred to and conferred upon the Secretary of Commerce and Labor, and the authority, power and jurisdiction in relation thereto, now vested by law or treaty in the Collectors of Customs and the Collectors of Internal Revenue, are hereby conferred upon and vested in such officers under the control of the Commissioner-General of Immigration as the Secretary of Commerce and Labor may designate therefor.

In pursuance of the foregoing provisions of said act, which take effect July 1, 1903, you will on that date, or as early thereafter as possible, forward to the Commissioner-General of Immigration all records, duplicate certificates, letters, papers, and data of every kind in the files of your respective offices relative to Chinese or Chinese certificates of residence. Such records, certificates, and papers should be carefully packed in strong wooden boxes, securely fastened, and forwarded by express, charges collect, plainly addressed to "The Commissioner-General of Immigration, Washington, D. C." The name of the place and district from which the package is sent should be distinctly marked on the outside of each box, and schedules in duplicate, setting forth in detail the contents of each box, should be prepared and forwarded by mail to the Commissioner-General with notice of shipment. One of the said schedules should be prepared for the signature of the Commissioner-General as a receipt for the contents thereof, and the letter notifying him of shipment should contain a request that he sign and return the receipt.

J. W. YERKES, *Commissioner*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

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(659.)

Packing smoking tobacco.

The regulations authorizing the manufacturer to put up smoking tobacco in subdivision packages containing less than 1 ounce of tobacco, and required to be repacked in larger packages, properly labeled and stamped, is held to be without authority of law, and the regulation is abolished.—All smoking tobacco is required to be put up in packages containing 1, 1⅛, 2, 2½, 3, 3½, 4, 8, or 16 ounces, respectively, and each package to be properly labeled and stamped before removal from the factory.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 6, 1903.

SIR: This office has received your letter dated 4th instant, and under separate cover a small pasteboard box containing 16 small parcels or packets of smoking tobacco, aggregating one-half pound, or one-half ounce of tobacco in each small package. The wrappers have written thereon the name and brand of manufacture and the words "This is an authorized subdivision taken from a properly stamped package." The caution-notice label also appears on each small package.

The larger package, with its subdivisions, is submitted for approval under the regulations No. 8, page 38. The manufacturer has affixed to the larger box an 8-ounce smoking-tobacco stamp, properly canceled, and so attached to the box as to seal the same and prevent the subdivisions from being removed therefrom without breaking the stamp. The caution-notice label, in form prescribed by the regulations, also appears affixed to the box.

The box, with its subdivisions, conforms to the requirements of the regulations.

The office has decided that the regulations, authorizing a manufacturer of tobacco to put up small parcels in packages containing less than 1 ounce to be repacked in larger packages, should be revoked and such subdivision packages abolished.

The act approved April 12, 1902, establishes a 1-ounce package of smoking tobacco, and such packages must be properly labeled and stamped. There is no authority of law for unstamped subdivision packages intended to be given away as free samples, and the application is denied.

The manufacturer will be required to put up all smoking tobacco in packages containing 1, 1⅛, 2, 2½, 3, 3½, 4, 8, or 16 ounces, respectively, and each small package must be properly labeled and stamped before removal from the factory.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. H. C. H. HEROLD, *Collector Fifth District, Newark, N. J.*

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(660.)

Legacy—Remainder interest.

Where, upon the death of the life tenant, the remainder interest is to pass to his or her child surviving, or, if deceased, to the issue of such deceased child, or, if leaving no issue, to the next of kin of the testator. *Held*, that in such case the remainder immediately vests in the child of the life tenant if living at the time of the testator's death.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 11, 1903.

SIR: On December 22, 1902, this office addressed a letter to you in reply to your letter, dated December 13, 1902, relative to a legacy tax due from a certain beneficial interest passing under the provisions of the will of the late ——— ——— to ——— ———, a nephew of the decedent.

This office holds that the beneficial interest passing to the nephew is a vested interest, while the attorney for the executors contends that the interest is contingent and exempt under the provisions of the act of June 27, 1902.

The whole question, therefore, is whether the said interest is a vested or a contingent interest. The clause of the will which governs in this particular matter is as follows:

Sixth. The trusts upon which my said executors and trustees shall hold the property given to them in trust, are as follows:

1. The property given in trust for my sister, ——— ———, shall be invested and kept invested by them; the income thereof shall be paid over to her semiannually or oftener, during her life, and the principal upon her death shall be distributed to her child her surviving, or the issue of such child if it has died before her leaving such issue, or in case she should leave no child or issue of any child at the time of her death, then to my next kin entitled to take under the laws of the State of New York.

The facts as developed are that ——— ——— is now living, aged 52 years, and that she has one child, ——— ———. As to whether ——— ——— has issue does not appear; neither is it material at the present time.

Bouvier defines the word "vest"—

To give an immediate fixed right of present or future enjoyment.

An interest in property which follows some particular estate—as, for instance, an estate for life—is not made contingent because the remainderman can only take in possession at the conclusion of the particular estate, if the particular estate must be determined by the efflux of time; nor by the fact that he may die before the particular

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estate determines. Neither of these things is a legal contingency which of itself makes an estate or interest contingent.

The argument is made by counsel for the estate that the ——— interest is contingent because he may die before the particular estate determines, or he may leave no issue, and in these events the property would go into the testator's estate.

The text writers, it is submitted, as well as the court decisions, sustain the view that the ——— interest is a vested interest; and in support of the foregoing the following citations are made:

The defeasibleness of the right of possession or enjoyment does not make a remainder contingent, * * * nor * * * that the remainder may never take effect in possession, for * * * it is * * * possible that the remainderman may die before the determination of the particular estate. (20 Encyclopædia of Law, 841, and cases noted.)

A vested remainder subject to a divesting contingency has, until the contingency happens, all the incidents of an indefeasible interest; if the contingency never happens or becomes impossible, the estate becomes absolute. (20 Encyclopædia of Law, 854.)

In the case of Thaw *v.* Ritchie (136 U. S., 519), a case involving the same questions as the one under consideration, the syllabus says:

A testator devised all his real and personal estate to his widow for life, in trust for the equal benefit of herself and their two children or the survivors of them, and devised all the property remaining at the death of the widow to the children or the survivor of them in fee; and if both children should die before the widow, devised all the property to her in fee. Held, that the widow took the legal estate in the real property for her life; that she and the children took the equitable estate therein for her life in equal shares, and that the children took vested remainders in fee, subject to be divested by their dying before the widow.

In the opinion of the court, on page 545, we find the court saying:

The effect of the testator's dispositions, though obscured by some confusion and superfluity of language, was to give the legal estate in all his land to his widow for life; the equitable and beneficial estate for her life to her and the two children, or the survivors of them, in equal shares, and the legal estate in remainder, after the death of the widow, to the two children, in fee, with two limitations over in fee, by way of executory devise (neither of which impaired the precedent estates or ever took effect)—the one of the share of a child dying before the mother to the surviving child, and the other of the whole estate to the mother in case she should survive both children. The legal estate in remainder in the children, which nothing but their own death before the determination of the widow's life estate could prevent from vesting in possession, vested in them from the death of the testator, subject to be divested by their dying before the widow.

So that in this case there appears to be an interest going to ——— ———, which, under all the authorities, is considered a vested interest, vesting immediately upon the death of the testator, only liable to be divested upon the happening of certain contingencies, those contingenies referring to the estates over and not to the estate of ——— ———. In other words, the contingencies named in the will are in the nature of conditions subsequent, which may by

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their operation divest the vested interest. But ——— ——— is still living, and if he survives his mother will certainly take a fee in the entire property held now in trust for him, the income of which during her life goes to his mother, ——— ———, and if ——— ——— can come into the enjoyment of that property by the terms of the will at the death of ——— ———, nothing but his own death will prevent him from enjoying the possession and use of that property.

Hence, under all the authorities, he has now a vested interest in the property; and if he has now a vested interest, that interest must have vested immediately upon the death of the testator, and is therefore taxable under the act of June 13, 1898, as amended.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———.

(661.)

Special tax—Brewers selling bottled beer.

A brewer who holds the requisite special-tax stamp posted up at his place of business as a malt-liquor dealer for the sale of his beer in bottles may deliver this bottled beer from wagons driven from place to place, or from places of storage to his regular customers, whose standing orders he has at his place of business, without involving himself in additional special-tax liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 16, 1903.

GENTLEMEN: In reply to your letter of the 11th instant, you are hereby advised that, under the long-settled ruling, a brewer holding the requisite special-tax stamp as a dealer in malt liquors for selling bottled beer, or any person holding such a special-tax stamp, who has standing orders from regular customers for bottled beer, may send out the beer in wagons by his drivers and they may ascertain from these customers on their routes how much bottled beer they may want and then deliver the beer to them without involving the dealer in additional special-tax liability on this account.

The dealer may also establish places of storage for the convenience of himself and his regular customers in thus delivering beer to these customers whose standing orders he has at his place of business where the requisite special-tax stamp is posted up, and additional special tax is not required to be paid by him at these places of storage if no orders are received and filled there.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

To ——— ———.

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(662.)

Assessments—Charge to jury in Brown v. Harkins, collector.

Power of Commissioner to assess taxes.—The list is *prima facie* evidence that the tax is legal.—When suit is instituted against the collector to recover taxes the burden is upon the plaintiff to establish, by proof, that the assessment is erroneous, and he must show that the tax is not due by *a preponderance of evidence.*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 22, 1903.

To collectors of internal revenue and others:

The appended charge of Judge Jas. E. Boyd in the circuit court of the United States for the western district of North Carolina, May term, 1903, is published for the information of all concerned.

J. W. YERKES, *Commissioner.*

IN THE CIRCUIT COURT OF THE UNITED STATES, WESTERN DISTRICT OF NORTH CAROLINA, AT ASHEVILLE, MAY TERM, 1903.

R. W. Brown v. H. S. Harkins, collector.

Charge of Judge BOYD:

"*Gentlemen of the jury:* This is an action brought by Brown, the plaintiff, against Harkins, the collector of internal revenue for this district, defendant, to recover a sum of money paid by plaintiff to the collector as internal-revenue taxes upon distilled spirits.

* * * * * * *

"Now, as to the law governing this case: The allegation of Brown, the plaintiff in the case, is that the assessment made by the Commissioner, charging him with a tax amounting to $883.80, is erroneous; that the spirits upon which the assessment is based was never produced by him; that in fact the property assessed for taxation never existed, and that he should not have been required to pay the tax.

"The manner of making the assessment is not impeached. It was made by the Commissioner as provided by law, is regular on its face, and therefore the assessment is presumed to have been made upon existing property and that the tax is due. The burden is, then, upon the plaintiff to establish, by proof, his contention that the assessment is erroneous. Before he is entitled to recover he must satisfy the jury by the weight of evidence that the taxes were assessed against him when the grounds upon which the assessment purports to be made did not exist.

"Where the assessor has jurisdiction of the property assessed, his act in making assessment partakes of a judicial character, and, although his determination may be subject to repeal or review, it can not be attacked collaterally, and his act, like those of all public officers, is presumed to be valid until the contrary is made to appear.

"The assessment made by the Commissioner of Internal Revenue is presumed to be a valid one. The Federal statute confers upon the Commissioner the power to assess the taxes provided by law upon distilled spirits, and when he has made an assessment and entered it upon the assessment list, and entered the name and residence of the taxpayer, no further evidence than the list is required as *prima facie* evidence that the tax is legal. It stands until it is shown by satisfactory proof to be illegal.

"If, upon the evidence in the case, the jury is satisfied that the spirits upon which the assessment is based were not produced by the plaintiff; that he did not evade th payment of the tax on the spirits included in the assessment, then the plaintiff

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entitled to recover; but, if the jury is not so satisfied, or if upon all the testimony the minds of the jury are left in doubt and are unable to determine how it is, then the assessment prevails and the verdict should be for the defendant.

"That is the rule of law as the court understands it, and you must apply the facts as you find them, keeping in mind that the assessment is *prima facie*. The burden is upon the party claiming to have paid the tax, and he must show by a preponderance of evidence that it is not due, and that the same is erroneous.

"If you find that the plaintiff did not produce the spirits upon which the tax has been assessed, that the basis of the assessment did not exist, if he has satisfied you of this fact, you will find for the plaintiff. But if, on the other hand, he has not so satisfied you, you should find for the defendant."

Verdict for defendant.

(663.)

Special tax—Retailing liquor on boats.

A special-tax stamp is not permitted to be issued for the retailing of liquor on any boat that is not engaged in the business of carrying passengers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 23, 1903.

SIR: Your letter of the 18th instant has been received, stating that application has been made to you in two instances for a special-tax stamp to cover the retailing of liquor on small boats plying on the Mississippi River, in one of which cases the applicant, after stating the capacity of his boat, says that "it can carry about 35 passengers," and in the other it is said that the boat "does carry passengers, but not regularly."

You are hereby directed to refuse to issue a special-tax stamp for the retailing of liquors on either of these boats or on any other vessels that are not regularly engaged in the business of carrying passengers. This is the settled ruling in view of the joint resolution of May 8, 1876 (Compilation 1900, p. 114), to which you refer.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. JOHN E. MCCALL,
Collector Fifth District, Nashville, Tenn.

(664.)

Special tax—Sale by distiller of whisky bought in bond.

Where a distiller sells to another his distillery and all his whisky in bond, the purchaser can not sell the packages of whisky without subjecting himself to special tax as a wholesale liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 23, 1903.

SIR: In reply to your letter of inquiry of the 15th instant, you are hereby advised that where a distiller has, as you state, sold to

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another "his distillery property and all of the whisky in the bonded warehouse," he can not, by continuing, as you suggest, "to make an annual distiller's bond" and authorizing the sale of the whisky in bond in his name, relieve the purchaser from special tax as a wholesale liquor dealer for selling this whisky which has become his own property. Such a case can not be brought within the exempting provision of the statute, which reads:

That no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor dealer on account of such sales. (Sec. 62, act of Aug. 28, 1894, 28 Stat., 509.)

Respectfully, J. W. YERKES, *Commissioner.*

Mr. E. S. CLARKE, *Falmouth, Ky.*

(665.)

Distiller's annual bond—Scope of obligation.

Decision in United States *v.* National Surety Company, an action instituted by the United States on a distiller's bond, executed by Wilson Howard, principal, and the National Surety Company, as surety.

The distiller's annual bond held liable for tax on spirits produced and removed from the warehouse without payment of tax when the warehousing bond is insolvent.—The judgment of the lower court (112 Fed. Rep., 336) reversed.—The construction of a revenue act by the Treasury Department, though not controlling, is entitled to respectful consideration.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1903.

To collectors of internal revenue and others:

The appended opinion of the United States circuit court of appeals, sixth circuit, relative to suits on distillers' annual bonds, is published for the information of all concerned.

J. W. YERKES, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.—No. 1161.

United States of America, plaintiff in error, v. *National Surety Company, of Kansas City, Mo., defendant in error.*

[Decided May 5, 1903.]

Before SEVERENS and RICHARDS, circuit judges, and CLARK, district judge.

STATEMENT.

This suit was brought by the United States on two ordinary annual distillers' bonds, executed by Wilson Howard, with the defendant in error as surety thereon, one in 1896 and the other in 1897, and exactly similar in form and effect.

The questions now presented for determination arise under a second amended petition in the cause.

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The action was for the collection of certain special deficiency assessments made by the Commissioner of Internal Revenue, and also for the amount of the tax on a specified number of gallons of spirits manufactured, or distilled, by said Howard during the term covered by the bonds, and subsequently deposited in a warehouse, and a warehousing bond executed to secure payment of the tax due thereon.

The suit was against the defendant in error alone, Wilson Howard having died before the institution of the suit. The amount claimed on account of special deficiency assessments was paid, or judgment taken without contest in the court below, and recovery for the tax on the quantity of spirits deposited in the warehouse was resisted on the ground that a warehousing bond had been executed and accepted to secure payment of that tax, in consequence of which the contention is that the defendant surety company was not liable for such tax.

A reply to the defendant's answer was filed on behalf of the United States, setting forth that judgment had been obtained upon the warehousing bond, and execution duly and promptly issued thereon, and returned *nulla bona*. The reply further averred that the surety on the warehousing bond was insolvent, and that since the execution of those bonds Wilson Howard had died, leaving no property whatever, and that his estate was insolvent. To this reply a demurrer by the defendant was sustained by the court and the suit dismissed, and to review that judgment writ of error was duly sued out and the case brought to this court.

OPINION.

CLARK, district judge, after making the foregoing statement, delivered the opinion of the court:

The distiller's bond on which the suit was brought was executed under section 3260 of the Revised Statutes of the United States, as amended by the act of 1894, which, so far as its provisions directly affect the matter now under consideration, is as follows:

"Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less than the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. But in no case shall the bond exceed the sum of one hundred thousand dollars."

After reciting that Wilson Howard was engaged and intended to be engaged in the business of a distiller, the condition of the bond, so far as that need be given, is:

"Now, therefore, if the said Wilson Howard shall, in all respects, faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions, and has not suffered and shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he has and shall carry on said business, then this obligation shall be void; otherwise it shall remain in full force."

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The warehousing bonds were executed pursuant to section 3293 of the Revised Statutes. In relation to the tax imposed on spirits, it was enacted in section 48 of the act of August 27, 1894—

"That the tax herein imposed shall be paid by the distiller of the spirits, on or before their removal from the distillery or place of storage, except in case the removal therefrom without payment of tax is authorized by law; and (upon spirits lawfully deposited in any distillery warehouse, or other bonded warehouse, established under internal revenue laws) within eight years from the date of the original entry for deposit in any distillery warehouse, or from the date of original gauge of fruit brandy deposited in special-bonded warehouse, except in case of withdrawal therefrom without payment of tax as authorized by law."

It has been suggested, rather than argued, that since the enactment of the law establishing bonded warehouses, and authorizing delay in payment of taxes due on spirits, upon the execution of a warehousing bond, the sureties on the original official bond of the distiller are not liable for the tax secured by the warehousing bond.

We do not think, however, it requires discussion to show that the payment of the tax imposed on distilled spirits is the duty of the distiller under the law for which the surety on the distiller's bond would be liable up to the time when the warehousing bond is executed. It must be true, we think, that the surety on the distiller's bond is liable for the tax on spirits manufactured, or produced, in the event no warehousing bond is given. The case of the United States *v.* Hart (95 U. S., 316) must be regarded as authority for the proposition that the surety would be liable for the tax under the circumstances just stated. It will also be observed, from the statement of facts found in that case, that the taxes assessed against the distiller, and sued for, were assessed against him on spirits which had been distilled and deposited in a bonded warehouse, and one of the defenses rested on the ground that the collector of internal revenue for that particular district had permitted a quantity of the spirits, more than sufficient to pay the taxes, to be removed from the bonded warehouse without the knowledge or consent of the sureties. Whether or not the usual warehousing bond was demanded and executed does not appear from the statement of the case. The defense was overruled, and it was adjudged that the sureties on the distiller's original or official bond were liable for the tax, and final judgment was rendered accordingly.

In the case of the United States *v.* Bicket *et al.* (24 Fed. Cas., No. 14590) the action was against the distiller and the sureties on his official distiller's bond, and conditioned in the very language of section 3260, for the performance of all the duties prescribed by law in relation to the duties and business of a distiller, and the breach of the bond averred in the declaration was that the distiller "did not faithfully observe all the provisions of the law in regard to the duty of the distiller, in that he did not pay the tax which accrued against said distillery and upon the high-wines manufactured by him therein," and the sureties were adjudged responsible on the bond for the tax thus accrued.

In the case of the United States *v.* Rindskoph (105 U. S., 418) the suit was again upon a distiller's bond, and the breach assigned was the nonpayment of the tax due on a specified number of gallons of spirits alleged to have been distilled at the distillery between certain dates, and final judgment was had in favor of the Government against the principal and sureties upon the bond.

In view of these and other cases which might be cited, we think it is not open to question that the payment of the tax imposed upon spirits distilled during the period of the bond is a duty the performance of which is secured by the bond, and for a failure to discharge which the sureties are responsible, and it only remains to consider whether or not this bond is extinguished, or the sureties released, in consequence of the execution of a warehousing bond, when that is done pursuant to section 3296,

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which authorizes this to be done as part of the general scheme for the collection of taxes provided in the revenue laws.

We have referred to the original bond of the distiller as his official bond, for it was so characterized in the case of the United States *v.* Singer (15 Wall., 111), and throughout the opinion referred to as "the official bond of the distillers and their sureties," although it is quite evident, in view of the nature of the subject, that such a bond is, in some respects, distinguishable from the ordinary official bond required of civil officers.

The question with which we now deal is whether or not the liability of the surety was extinguished by the execution of the warehousing bond. The law under which this bond was executed in order to obtain delay in payment of the taxes was, of course, in force at the time of the execution of the bond in question, and constituted a well-known part of the revenue scheme upon the subject. It is a familiar principle that sureties, when executing a bond, are presumed to know the law and to contract with reference to all of its provisions, which are, by construction, read into the contract, so far as they are material. This is true not only in regard to duties imposed by law in force at the time of the execution of the bond, but also with reference to duties subsequently imposed by legislative authority.

For example, in the case of the United States *v.* Powell (14 Wall., 498), the facts were that the distiller had executed two bonds, and the action was upon both bonds, conditioned alike and in almost the very words of section 3260, and the action was against the distiller and the sureties upon both bonds. Subsequent to the execution of the first bond, and during the period of its term, Congress passed a resolution providing that—

"The proprietors of all internal revenue bonded warehouses shall reimburse the United States the expenses and salary of all store-keepers or other officers in charge of such warehouse."

The sureties, by plea, set up as a defense against recovery on the first bond that at the date of execution of said bond the Government was, by law, bound to pay the storekeepers, and that the joint resolution of Congress could not increase the responsibility of the sureties after the date of execution of the bond. This defense was overruled, and it was adjudged that the sureties were liable for the performance of this additional duty to pay the expenses and salary of the storekeepers put in charge of the warehouse by the Government. Mr. Justice Clifford, delivering the opinion of the court, said:

"Stronger language to signify an intention to stipulate that the principals in the bond should comply with duties subsequently imposed by law in relation to the business of a distiller could not well be employed, as the language of the bond is that they shall faithfully comply with all the provisions of law in relation to the duties and business of distillers, knowing, as all the obligors did, that Congress might at any time enact new provisions imposing new duties, or vary those already imposed.

* * * * * * *

"Bonds in such cases, as well as in cases like the one before the court, are required to secure the faithful discharge of the duties ordinarily imposed upon the principal obligor, without reference to the time when the law was passed imposing the duty, and where, as in this case, the language of the bond is sufficiently comprehensive to embrace duties subsequently imposed, of a character corresponding with those required at the date of the bond, the construction which gives a prospective as well as a retrospective operation to the condition of the bond may well be adopted as both reasonable and just to all concerned."

In the closely related subject of revenue derived from customs duties, it is a well-settled principle under the customs duties acts of Congress that the right to duties accrues by the importation, with the intent to unlade, and immediately upon the

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importation the duties become a personal charge and a personal debt against the importer, and a bond subsequently taken at the custom-house to secure payment of these duties by the importer is not an extinguishment of the debt, but is merely collateral security for its payment. (United States *v.* Lyman, F. C., No. 15,647; 1 Mason, 482).

The opinion in this case was by Mr. Justice Story, and, as might be expected, is exhaustive and instructive.

Under the revenue act it was provided that the duties due from the importer "shall be paid or secured to be paid by bond." It was at the option of the importer to pay the duties and at once take the goods imported, or to deposit such goods and secure their payment by bond, just as a distiller may pay the tax due on the distilled product, or deposit the same in a warehouse and secure delay in the payment by the execution of bond. In relation to the effect of such a bond executed under the customs duties act, Mr. Justice Story, in the case referred to, said:

"But I am prepared to go yet farther, and to hold that a bond given under the revenue act of 1799, by the importer himself, and *a fortiori* by a third person (if legal) would not extinguish the original debt created by the act of importation. I admit the doctrine, that in general a higher security taken from the debtor himself extinguishes the original contract. But this proceeds upon a presumption of law, that it is taken in satisfaction of the original debt; for if it appear otherwise upon the face of the security, it will not operate as an extinguishment. Thus, a bond of the debtor with sureties, or a mortgage, may be taken as collateral security for the payment of a promissory note; and in such case it certainly does not extinguish the demand on the note.

"My opinion, therefore, that a bond taken under the revenue act of 1799, is not an extinguishment of the debt, accruing by the importation of the goods, is founded, not upon the notion that the debts are of the same nature and dignity, but upon the intent and language of the statute itself. It provides that within fifteen days after the arrival of the goods the importer may enter the goods, pay the duties at once, or give bond, with sufficient sureties, to secure the payment of the duties at a future period; or otherwise, the goods are to be deposited in the stores of the Government as a security for such payment.

* * * * * * *

"And throughout the whole act, the bond is uniformly termed a bond to secure the duties, and not a bond in payment of the duties. If, therefore, the statute intended the bond as a mere security for the duties (and this intention is proved irresistibly to my mind) there is an end to the whole question; for in no case can a higher security operate an extinguishment against the plain import of the statute under which it is taken."

It is to be kept in mind that the revenue laws, in relation to bonds required, as well as in other respects, are not to be regarded as penal, and therefore to be strictly construed, but as remedial and to be liberally construed, in order to give full effect to the purposes of their enactment. (United States *v.* Hodson, 10 Wall., 406; United States *v.* Stowell, 133 U. S., 1.)

It has been said again and again in the adjudged cases that the tax on distilled spirits attaches as soon as the spirits come into existence, and it is plainly evident, as we have seen, that the surety on a distiller's bond is liable for this tax, which it is a duty, under the law, of the distiller to pay, unless that duty or obligation to pay, or debt, as it is otherwise called, is extinguished by the execution of a warehousing bond, when such bond is executed instead of immediate payment, in order to obtain delay in the payment of the taxes by storing the distilled spirits in a bonded warehouse, as may be done under the act. The distiller's official bond is required; the tax is made a lien on the distilled spirits and certain other property of the distiller; and in the event delay in payment is desired the additional warehousing bond is

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required—all pursuant to the manifest purpose of Congress to make certain that the Government will receive the tax imposed, so far as full legislation upon the subject can accomplish that purpose.

In view of this purpose, the reasonable construction is that the distiller's bond was required to be executed in broad terms, which imposed upon the distiller and his surety the obligation to discharge every duty resting upon the distiller, under the law, including the duty to pay the tax on distilled spirits, and that the warehousing bond required, in order that the distiller may obtain delay in the payment of this debt, is required pursuant to this purpose, as additional security, and the execution of the warehousing bond was not intended to extinguish the liability of the distiller or his surety on the first bond.

Congress, in providing for the somewhat extended delay, covering years, during which the tax might be paid on spirits thus deposited in a warehouse, could not have been unmindful of the lesson of common experience—that in consequence of death and business reverses during such a period of time the official distiller's bond might become worthless as security, just as happened in regard to the warehousing bond executed to secure the tax now in question. It was but the suggestion of common business prudence, when delay was granted in the interest of the distiller, to do so only upon condition of his giving security for the tax in addition to that which already existed under the duty to pay the tax immediately, and the requirement of cumulative security, by additional bond, affords no just ground for the contention that Congress thereby manifested any intention to extinguish the liability, or release the obligors, either principal or surety, under the original bond. And the general rule is that a later statute will not be held to disturb the provisions of a former law by implication, when there is not a clear repugnancy.

The proposition is that the second bond was not successive, but cumulative; that the first bond continued in force as a security for the discharge of the duty, as at first contemplated, and that the additional or warehousing bond was intended as additional security for the discharge of a specifically named one of the duties covered by the first bond.

Mr. Justice Gray, speaking for the court in the case of United States *v.* Witten (143 U. S., 78), said:

"The deposit of the spirits in the warehouse was solely for the benefit of the distiller and to enable him to give bond for the payment of the tax on the spirits, instead of paying the tax at once. The Government assumed no responsibility to him for their safe-keeping. If he was not satisfied with the security of the warehouse, he had only to take any measure, consistent with the access and supervision of the revenue officers, to make it more secure, or else to pay the tax and remove the spirits."

The statutes upon this subject provide a complete plan, or scheme, for the collection of the tax imposed on distilled spirits, and the construction of them, which we have thus indicated, is in accordance with a construction given to them in their practical administration by the Treasury Department, as will appear from TREASURY DECISIONS, 1899 (vol. 1, No. 20920), in the matter of warehousing and distillers' bonds. The construction by that Department was and is that suit can be maintained on the distiller's bond to recover the tax on spirits, when the principal and surety on the warehousing bond are insolvent. The view is also expressed that the remedy on the warehousing bond should be exhausted before resort is had to the distiller's bond.

The construction of a revenue statute by the Treasury Department, "though not controlling, is not without weight, and is entitled to respectful consideration." (Smythe *v.* Fiske, 23 Wall., 382.)

The weight of a contemporaneous construction of a statute which admits of doubt by those charged with its execution has been recognized and declared in many cases. (United States *v.* Johnston, 124 U. S., 236; United States *v.* Finnell, 185 U. S., 236; Pennoyer *v.* McConnaughy, 140 U. S., 23.)

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We think the construction of the revenue laws thus indicated is sound in principle, and supported by well-considered cases, which furnish a close analogy.

We conclude that the United States was entitled to judgment for such taxes as accrued upon the spirits manufactured by the distiller during the period of his official bond, and that there was error in the ruling and judgment of the court below.

The judgment of that court is accordingly reversed and the case remanded for further proceedings, not inconsistent with the opinion of this court.

(666.)

Legacy to a municipal corporation.

A legacy in Government bonds to the city of Springfield, Ohio, the principal of which by the terms of the will, was to be kept permanently invested and the income to be expended in the maintenance and improvement of a public park of the city was taxable under the war-revenue law.—The tax is not regarded as a tax upon the municipality. Congress has the power to tax the transmission of property by legacy to States or their municipalities. Such taxes are not upon property, but upon the right to succeed to property.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C, June 9, 1903.

To collectors of internal revenue and others:

The appended decision of the United States Supreme Court, relative to tax on a legacy to a municipal corporation, is published for the information of all concerned.

J. W. YERKES, *Commissioner.*

SUPREME COURT OF THE UNITED STATES.

William L. Snyder, executor, plaintiff in error, v. *Bernard Bettman, collector.*

[In error to the circuit court of the United States for the southern district of Ohio.]

[June 1, 1903.]

This was an action brought by the executor of David L. Snyder against the collector of internal revenue to recover $22,000 succession tax upon a legacy of $220,000, bequeathed to the city of Springfield, Ohio, in trust to expend the income in the maintenance, improvement, and beautifying of a public park of the city. known as Snyder Park, including any extension thereof which said city might acquire. Such tax having been paid under protest, this action was brought to secure a refunding of the same.

A demurrer to the petition having been overruled by the circuit court, and final judgment entered, the case was brought here by writ of error.

Mr. Justice BROWN delivered the opinion of the court:

This case involves the single question whether it is within the power of the Federal Government, and within the spirit of the act of Congress of June 13, 1898 (31 Stat., 946), to impose a succession tax upon a bequest to a municipal corporation of a State for a corporate and public purpose.

The case is to a certain extent the converse of those of the United States *v.* Perkin (163 U. S., 625) and Plummer *v.* Coler (178 U. S., 115). In the first of these we held it to

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within the competency of the State of New York to impose a similar tax upon a bequest to the Federal Government, incidentally deciding that the inheritance tax of the State was "in reality a limitation upon the power of a testator to bequeath his property to whom he pleases, and a declaration that, in the exercise of that power, he shall contribute a certain percentage for the public use;" and (2) that the tax was not a tax upon the property itself, but upon its transmission by will or descent. In Plummer *v.* Coler we held the incidental fact that the property bequeathed is composed in whole or in part of Federal securities did not invalidate the State tax or the law under which it was imposed, although it was accepted as undeniable that the State could not, in the exercise of the power of taxation, tax obligations of the United States, and, correlatively, that bonds issued by a State, or under its authority by its municipal bodies, were not taxable by the United States.

It is insisted, however, that the case under consideration is distinguished from those above cited, in the fact that the inheritance tax of New York was but a condition annexed to the power of a testator to dispose of his property by will, and that such power, being purely statutory, the State has the right to annex such conditions to it as it pleases. The case, then, really resolves itself into the question whether the authority to lay a succession tax arises solely from the power to regulate the descent of property, or, as well from the independent general power to tax, or, as expressed in the Constitution (Art. I, sec. 8), "to lay and collect taxes, duties, imposts and excises." The difficulty with this proposition of the plaintiff is that it proves too much. If it be true that the right to impose such taxes arises solely from the right to regulate successions, then a denial of such right goes to the whole power of the Government to impose a succession tax, irrespective of the question whether the legacy is made to a private individual or to an agent of the State, and the cases in this court upholding the power of the Federal Government to lay such tax were wrongly decided.

That question was exhaustively considered by this court in Knowlton *v.* Moore (178 U. S., 41), in which the constitutionality of this law was attacked upon four grounds: (1) That the taxes imposed were direct taxes, and not apportioned according to the population; (2) if not direct, they were levied on rights created solely by a State law, depending for their continued existence on the consent of the several States; (3) because they were not uniform throughout the United States; (4) that the rate of tax was determined by the aggregate amount of the personal estate of the deceased, and not by the sum of the legacies or distributive shares. It was held, following the cases of United States *v.* Perkins (163 U. S., 625) and Magoun *v.* Illinois Trust and Savings Bank (170 U. S., 283), that an inheritance tax was not one upon property, but upon the succession. The question involved here, as to the power of Congress to levy a succession tax, was considered, and it was said by Mr. Justice White (p. 56): "The proposition that it can not rests upon the assumption that, since the transmission of property by death is exclusively subject to the regulating authority of the several States, therefore the levy by Congress of a tax on inheritances or legacies in any form is beyond the power of Congress, and is an interference by the National Government with a matter which falls alone within the reach of State legislation." This proposition was pronounced a fallacy (p. 59): "In legal effect, then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the Government of the United States on the one hand or the several States on the other, the exercise of such rights as regulated can alone be taxed by the government having the mission to regulate." In this connection was cited the power of the States to tax imported goods after they had been commingled with the general property of the State, as well as vehicles engaged in interstate commerce.

Continuing, it was further said (p. 60): "It can not be doubted that the argument, when reduced to its essence, demonstrates its own unsoundness, since it leads to the

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necessary conclusion that both the National and State governments are divested of those powers of taxation which, from the foundation of the Government, have admittedly belonged to them. * * * Under our constitutional system both the National and the State governments, moving in their respective orbits, have a common authority to tax many and divers objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of the other, for if it did there would practically be an end of the dual system of Government which the Constitution established."

This case must be regarded as definitely establishing the doctrine that the power to tax inheritances does not arise solely from the power to regulate the descent of property, but from the general authority to impose taxes upon all property within the jurisdiction of the taxing power. It has usually happened that the power has been exercised by the same government which regulates the succession to the property taxed; but this power is not destroyed by the dual character of our Government, or by the fact that under our Constitution the devolution of property is determined by the laws of the several States.

The principles laid down in Knowlton *v.* Moore were reiterated in Murdock *v.* Ward (178 U. S., 139), although the case was decided upon the authority of Plummer *v.* Coler.

If it be true that it is beyond the power of Congress to impose an inheritance tax because the descent of property is regulated by State statutes, it would be difficult to support its power to impose stamp taxes upon commercial and legal instruments, since the conveyance, regulation, and transmission of all property is governed by the laws of the several States. Particularly would this be so with reference to stamp duties imposed upon documents connected with the devolution of the property of a deceased person. And yet, as stated in Knowlton *v.* Moore (p. 50) Congress, as early as 1797, imposed a stamp duty, not only upon receipts or other discharges for or on account of any legacy, or for a share of personal estate divided under the statute of distributions, proportioned to the amount of the legacy or such distributive share, but in the internal-revenue act of 1862 (12 Stat., 432, 483) a tax was imposed upon the probate of wills and letters of administration, proportioned to the value of the estate. Not only this, but the same statute imposed a tax upon writs, or other original process, by which suits are commenced in any court of record, exempting only processes issued by justices of the peace, or in suits begun by the United States, or any State. This act was treated as applicable to the State courts, although its constitutionality may well be doubted.

Referable to the same principle is the power of Congress to tax occupations which can only be carried on by permission of the State authorities and under conditions prescribed by its laws—such, for instance, as the profession of a lawyer or physician, or the business of dealing in spirituous liquors, for which licenses are required under the laws of nearly all the States. While the power of Congress to impose such taxes may never have been expressly affirmed by this court, it does not seem to have been seriously questioned, and is a legitimate inference from McGuire *v.* The Commonwealth (8 Wall., 387); The License Tax Cases (5 Wall., 462); Pervear *v.* The Commonwealth (5 Wall., 475), and Royall *v.* Virginia (116 U. S., 572. 580). See, also, Ould *v.* City of Richmond (23 Gratt., 464); Humphreys *v.* City of Norfolk (25 Gratt., 97).

Conceding fully that Congress has no power to impose a burden upon a State or its municipal corporations, the question in each case is whether the tax is direct or incidental, since we have had frequent occasion to hold that the imposition of a tax may indirectly affect the value of property to the amount of the tax without being legally objectionable as a direct burden upon such property. Thus, in Van Allen *v.* The Assessors (8 Wall., 573), we held it to be within the power of the States to tax t shares of national banks, though a part or the whole of the capital of such bank we

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invested in national securities exempt from taxation, upon the ground that the taxation of the shares was not a taxation of the capital. So a tax upon deposits was upheld, though such deposits were invested in United States securities. (Society for Savings *v.* Coite, 6 Wall., 594; Provident Institution *v.* Massachusetts, 6 Wall., 611; Hamilton County *v.* Massachusetts, 6 Wall., 632.) The same principle was extended to a statute of New York, imposing a tax upon corporations measured by its dividends, though such dividends were derived from interest upon Government bonds. (Home Insurance Company *v.* New York, 134 U. S., 594.) As the tax in the case under consideration is collected from the property while in the hands of the executor (sec. 30), who is required to liquidate it "before payment and distribution to the legatees," we do not regard it as a tax upon the municipality, though it may operate incidentally to reduce the bequest by the amount of the tax. Such incidental effects are common to many, if not all, forms of taxation—indeed, it may be said generally that few taxes are wholly paid by the person upon whom they are directly and primarily imposed.

Having determined, then, that Congress has the power to tax successions; that the States have the same power, and that such power extends to bequests to the United States, it would seem to follow logically that Congress has the same power to tax the transmission of property by legacy to States, or their municipalities, and that the exercise of that power in neither case conflicts with the proposition that neither the Federal nor the State government can tax the property or agencies of the other, since, as repeatedly held, the taxes imposed are not upon property, but upon the right to succeed to property.

If the position of the plaintiff be sound, it will come to pass that, with the same power to tax the subject-matter—*i. e.*, the transmission of the property—the States are competent to limit the amount of bequests to the Federal Government by requiring the prepayment of a succession tax as a condition precedent to the transmission of the property, while Congress is impotent to accomplish the same result with respect to legacies to States or their agents. We are reluctant to admit the inferiority of Congress in that particular.

The judgment of the circuit court is, therefore, affirmed.

Chief Justice FULLER and Justices WHITE and PECKHAM dissented.

(667.)

Tax assessed.

Procedure when property of person assessed is in hands of a receiver.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 10, 1903.

SIR: Your letter of the 2d instant has been received, relating to assessment of special tax and penalty standing against ——— ———, as wholesale dealers in malt liquor, whose property has been put into the hands of the receiver appointed by the State court.

You say that "a distraint warrant was issued" but you are "at a loss to know how to proceed" as "these persons have no visible property," but you "learn the receiver has money in the bank of ——— belonging to ——— ———."

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You are hereby directed to serve notice on the receiver of the assessment standing against these persons and request payment, and also call upon the United States district attorney to appear before the State court and move for an order upon the receiver to pay the amount of this assessment before payment of any other debt that is not a specific lien against the property, in view of the right of the United States to priority of payment under section 3466, Revised Statutes.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. H. A. RUCKER, *Collector Internal Revenue, Atlanta, Ga.*

(668.)

Oleomargarine—Returns on Forms 500 and 502.

Instructions to collectors concerning the preparation of Forms 500 and 502, showing payment of special tax as wholesale and retail dealers in oleomargarine taxed at the rate of one-fourth cent and 10 cents per pound, respectively. (See also T. D., 672.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 11, 1903.

To collectors of internal revenue:

In connection with the qualification of wholesale and retail dealers in oleomargarine, taxed at the rate of one-fourth of 1 cent and 10 cents per pound, respectively, you are instructed to have your returns on Forms 500 and 502 prepared with great care, for the reason that the entries on said forms will undoubtedly be very heavy for the fiscal year beginning July 1, 1903.

Reports which do not conform to the following instructions will not be accepted:

All information furnished must be clearly and legibly written.

The entries of names of dealers must be made in strict alphabetical order.

The full address, street, and number of every dealer must be furnished.

The entry in the column headed "Period covered by payment of tax" should show the actual time from which the liability to special tax began.

This matter is called to your attention because it is the practice of many dealers to make payment in advance during June for the fiscal year immediately to follow. Such payments are shown by

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collectors on their June Forms 500 and 502, and these instructions should be observed in the preparation of said forms.

J. W. YERKES, *Commissioner.*

(669.)

Oleomargarine.

Upon oleomargarine of the manufacture of the United States once exported free of tax, and afterwards returned from the foreign port to the United States, there shall be paid a duty equal to the internal-revenue tax imposed upon oleomargarine of the class to which such returned goods properly belong.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 16, 1903.

SIR: Your letter of the 12th instant, transmitting an application of Swift & Co., manufacturers of oleomargarine at Jersey City, for permission to return to the factory from Kingston, Jamaica, 10 cases of oleomargarine exported on April 15, is received.

It appears from the statement of the manufacturers that upon arrival of these goods at the foreign port they were found to be of a quality unsuitable for the market to which they had been shipped, and Swift & Co. desire to return them to this country in order that same may be reworked, provided this can be done without payment of internal-revenue tax or customs duties, and you ask to be informed in the premises.

In reply, your attention is called to the customs administrative act, in effect August 1, 1890, as amended by the act of April 24, 1897, section 27, which provides—

That upon the reimportation of articles once exported, of the growth, product or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the Internal Revenue Laws upon such articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

The goods proposed to be returned by the manufacturers come under the classification of the above section, and, therefore, there would be levied and collected a duty equal to the internal-revenue tax imposed upon domestic oleomargarine of the class to which these goods belong; if artificially colored, 10 cents per pound, otherwise one-fourth of a cent per pound.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. H. C. H. HEROLD,
Collector of Internal Revenue, Newark, N. J.

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(670.)

Issuance of search warrants—Opinion of Attorney-General.

The law imposes upon United States commissioners the duty of issuing search warrants when properly applied for, although no compensation is provided therefor.—Remedy in case a commissioner refuses.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 23, 1903.

To collectors of internal revenue:

The appended opinion of the Attorney-General, relative to United States commissioners issuing search warrants, is published for the information of all concerned.

J. W. YERKES, *Commissioner.*

DEPARTMENT OF JUSTICE, *Washington, D. C., June 19, 1903.*

SIR: From your letter of January 24, 1903, and the papers transmitted therewith, it appears that a United States commissioner at Atlanta, Ga., refuses to issue search warrants on the application of officers and agents of the Internal Revenue Service in the performance of their duties, because, as held by your Department, the law does not provide a fee for that specific service; and you submit the questions (1) whether the law does allow United States commissioners any fee for issuing such search warrants? (2) If not, are such commissioners required to issue such warrants when properly applied for? And (3) what course should be pursued in case a commissioner refuses to do so?

Section 19 of the act of May 28, 1896 (29 Stat., 184), which abolished the office of commissioner of the circuit courts, created the office of United States commissioner, and imposed upon the district court the duty of appointing such officers. It was therein provided that such commissioners "shall have the same powers and perform the same duties as are now imposed upon Commissioners of the Circuit Courts;" and that "all acts and parts of acts applicable to Commissioners of the Circuit Courts, *except as to appointment and fees*, shall be applicable to United States Commissioners appointed under this act."

Section 21 of that act, which fixes the fees of United States commissioners, provides "that each United States commissioner shall be entitled to the following-named fees, *and none other.*"

The section then specifically names each particular service and fixes the fee therefor; but nowhere provides for issuing the warrants here in question, nor any fee therefor. Hence, if the only duties required of such commissioners are those prescribed by this section, they are not required to issue such warrants.

Section 3462, Revised Statutes, provides that—

"The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search warrant authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe and does believe that a fraud upon the revenue has been or is being committed upon or by the use of said premises."

While this provision is, in terms, permissive only, yet by a familiar rule of construction, such a statute relating to the performance of a public duty by a public officer is

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mandatory in its requirement. This section imposes upon the commissioners of the circuit courts the duty of issuing such warrants when proper application therefor is made; and this duty, thus imposed, is by section 19 of the act of May 28, 1896, imposed upon the present United States commissioners. And, because the law imposes upon the commissioners the duty of issuing search warrants, when properly applied for, I should have no doubt that they were entitled to compensation therefor but for the positive prohibition of section 21 of the act referred to (United States *v.* McDermott, 140 U. S., 151).

But, the implication that this prohibition was intended to exclude all compensation not provided for in that section, even though for other services expressly required by law—and specifically for issuing these search warrants—is still stronger from the fact that this section was enacted after the provisions requiring commissioners to issue search warrants, of the existence of which Congress must be presumed to have been aware.

Ordinarily, where an officer's compensation is by specific fees for specified services or duties, Congress does not impose upon or require of such officer other responsible duties or services without additional compensation therefor. But Congress may and has at times done so. While compensation is ordinarily provided for official service, yet the obligation of an officer to perform any duty imposed upon him by law is not at all dependent upon whether he receives any compensation especially for that service or not. No one is compelled to accept the office of United States commissioner, and if one does accept it he is presumed to undertake the performance of all the duties of such office for the compensation provided by law. As is said by the Supreme Court in United States *v.* Shields (153 U. S., 88, 91)—

"Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action on the part of the officials."

Since the passage of the act here considered, your Department, through the Comptroller of the Treasury, has uniformly held that section 21 of the act not only has not provided for, but has expressly prohibited, any compensation to commissioners for issuing search warrants on application of internal-revenue officers or agents. In this, I am not prepared to say the Comptroller was wrong. On the contrary, I think he was bound to take the law as thus plainly enacted. However inadvertent may have been the omission of a provision for compensating commissioners for this responsible service, it can not be corrected or supplied by executive officers called upon to administer the law.

The section providing for the issue of these search warrants does not state all of that which must be stated in the application therefor. The Fourth Amendment to the Constitution provides that "no warrant shall issue but upon probable cause, supported on oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." The determination of the question whether this requirement and those of the section referred to have been met, and whether the warrant should issue in a particular case, is a highly responsible and important duty; but however responsible and important, no provision is made in the section referred to, nor elsewhere, for its compensation.

I am therefore of the opinion that, although no compensation is provided therefor, it is the duty of United States commissioners to issue search warrants in internal revenue cases, when properly applied for.

The answer to the question of what course should be pursued in case a commissioner refuses, on proper application, to issue a search warrant, may be answered by stating that the power to remove such commissioners, by section 19 of the act creating the office, is vested in the court which appoints them. In case of such refusal, the officers of your Department may, by petition or otherwise, bring the facts to the

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attention of the court appointing such recusant officer, in order that the court may take such action upon the complaint as it deems proper.

Respectfully, P. C. KNOX, *Attorney-General.*

The SECRETARY OF THE TREASURY.

(671.)

Special tax—Retailing liquor on excursion boats.

Ruling 663 (TREASURY DECISIONS, vol. 6) is not intended to forbid the issuance of special-tax stamps for the retailing of alcoholic liquors on excursion boats.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 23, 1903.

SIR: In reply to your letter of the 18th instant, you are hereby advised that you are correct in holding that ruling 663 (TREASURY DECISIONS, vol. 6) is not intended to forbid the issuance of special-tax stamps for the retailing of alcoholic liquors on excursion boats.

Excursion boats and excursion railway trains are to be regarded as engaged in the business of carrying passengers within the meaning of the joint resolution of Congress of May 8, 1876, on which ruling 663 is based. Although they are not regular boats or regular trains, their business is the business of carrying passengers from one place to another.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. P. G. RENNICK, *Collector Fifth District, Peoria, Ill.*

(672.)

Oleomargarine.

Instructions to collectors supplementing T. D. 668, regarding the preparation of Forms 500 and 502, showing the names of persons who have paid special tax as dealers in oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 26, 1903.

To collectors of internal revenue:

This office desires to call your attention to circular letter of instructions issued to collectors under date of June 11, 1903, in regard to the manner in which reports on Forms 500 and 502 should be prepared (T. D. 668), a copy of which is inclosed for your information.

In order that confusion may be avoided, please see that in preparing said forms the names are entered in strict alphabetical order. In case the entry on a line shows the payment of special tax by an individual, the surname should appear first and the given name

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initials should be afterwards entered; for instance, "Dawson, G. G.," Indianapolis, 443 Cornell Ave., R. D. O., May 1, 1903.

It is believed that if the above instructions are followed in conjunction with the circular letter above referred to much unnecessary labor will be obviated.

J. W. YERKES, *Commissioner.*

(673.)

Oleomargarine and renovated butter.

Instructions to collectors in regard to filing notices, inventories, and bonds by manufacturers of oleomargarine and renovated butter.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1903.

To collectors of internal revenue:

You will please secure from all manufacturers of oleomargarine and renovated butter in your district who desire to continue in the manufacture of their respective products after June 30 the required notices and a renewal of their bonds for the year commencing July 1, 1903. Where possible, the closing and opening inventories should be filed at the closing and opening of business on June 30 and July 1, respectively.

Your attention is especially called to the following instructions relative to the preparing and filing of bonds, notices, and inventories by manufacturers of oleomargarine and renovated butter: Section 5, act of August 2, 1886; section 4, act of May 9, 1902, and regulations No. 9, page 20, paragraph 1; page 24, paragraph 1, and page 92, paragraph 9.

J. W. YERKES, *Commissioner.*

(674.)

Manufacturers' accounts.

Collectors not required to make semiannual reports on Forms 144 and 146 of cigar and tobacco manufacturers' accounts for July 1, 1903.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 3, 1903.

SIR: In reply to letter from your office, dated 30th ultimo, relating to the preparation of Forms 144 and 146, you are informed that such forms are required to be prepared at the close of each calendar year, or at the time the manufacturer discontinues business.

The semiannual reports on these forms were required only when

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there was a change in the rate of tax. The rates fixed by act of April 12, 1902, to take effect on July of that year, are the present rates, and semiannual reports on Forms 144 and 146, for July 1, are not required to be made.

Respectfully, JAS. C. WHEELER, *Deputy Commissioner.*

Mr. JOS. A. CRAFT, *Collector Fifth District, Louisville, Ky.*

(675.)

Transcript of leaf-tobacco dealers' books.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 3, 1903.

To collectors of internal revenue:

Your attention is invited to the last paragraph of page 17 and to page 18, regulations No. 8, revised July 1, 1903, relative to transcripts of the books of leaf-tobacco dealers (No. 59).

In the preparation of quarterly transcripts of these books on Form 434 entries of all sales to purchasers in one district should be made separately from sales to other districts—that is, the transcripts should not embrace more than one district, separate sheets being used for each district.

Upon receipt of these transcripts at this office they will be forwarded to the collectors of the proper districts for comparison with returns on Form 62 or 72, as the case may be, of manufacturers of cigars or tobacco. A transcript should not embrace more than one district.

The object of preparing transcripts in this way is to avoid the necessity for transcribing the same after they are received at this office.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(676.)

Internal-revenue taxes.

Suits for recovery of taxes may be brought at any time.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 7, 1903.

SIR: In reply to your letter of the 2d instant, in regard to the case of ——— ———, you are informed that suits for the recovery of taxes can be brought at any time, whether the taxes have been assessed or not, and whether they are assessable or not. This is in accordance with the decision of the United States Supreme Court in the case of the Dollar Savings Bank *v.* United States (19 Wall., 227; 19 Int. Rev.

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Rec., 89, 90), and King *v.* United States (99 U. S., 229). See, also, the decision of Judge Blatchford, United States district court, southern district of New York, in United States *v.* Tilden (Int. Rev. Rec., Vol. XXIV, p. 99).

Respectfully, ROBERT WILLIAMS, Jr.,
Acting Commissioner.

Mr. WILSON LEE CANNON, Jr., *New York, N. Y.*

(677.)

Legacy tax.

Property passing to a legatee by virtue of a power of appointment granted under the will of one dying prior to the act of June 13, 1898, and exercised by the donee subsequent thereto, is held not subject to legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 8, 1903.

SIR: The claim of N. Dubois Miller *et al.*, executors of the will of Sallie M. Waln, deceased, for the abatement of $3,422.04, additional tax assessed upon property passing under the will of Sallie M. Waln, by virtue of a power of appointment granted to her under the will of Jacob S. Waln, has been examined and allowed.

Jacob S. Waln died in 1850, and the question involved is whether the legacies passed under his will or under the will of Sallie M. Waln, who exercised the power of appointment granted by Jacob S. Waln.

It was formerly held by this office that where a legatee became entitled to a legacy through the exercise of the power of appointment subsequent to June 13, 1898, the legacy tax was required to be paid (T. D. 274). The courts have rendered three decisions on this question since that ruling was made, which have been adverse to the Government.

The decision in the United States circuit court of the eastern district of Pennsylvania, in the case of the Fidelity Trust Company *v.* McClain, was published in 113 Federal Reporter, 152. The court said:

> So, in Emmons *v.* Shaw (171 Mass., 410; 50 N. E., 1033), it was held that the donor of a power, rather than the donee, must be regarded as the decedent whose estate is liable to taxation under the act imposing a tax upon legacies and successions, and this was followed in Balch *v.* Shaw (174 Mass., 144; 54 N. E., 490). A similar ruling is also to be found in *In re* Stuart (131 N. Y., 274; 30 N. E., 184; 14 L. R. A., 836).
>
> Not only on principle, therefore, but by authority, there seems no escape from the conclusion that the legacies in the present instance passed by virtue of the will of George Crossman, the original testator, in 1882, and not by that of his wife, Hannah, and that they were not, therefore, liable to the tax which the plaintiff, as executor, has been compelled to pay.

This case was appealed to the United States circuit court of appeals, which affirmed the decision of the circuit court.

The next case was that of John W. Weed, executor of the last will

and testament of Madeline Beeckman, deceased, against Ferdinand Eidman, collector of internal revenue, to recover the sum of $223.20 with interest. It appears that Madeline Beeckman died June 12, 1901, and that the tax was on a trust fund which was created by the last will and testament of John R. Townsend, probated in 1846. The trust fund was bequeathed by John R. Townsend in trust to the United States Trust Company, of the city of New York, as trustee to pay over to said Madeline Beeckman during her lifetime the income arising therefrom. The fund, after the life interest, was to go by the will of Townsend to such persons as Madeline Beeckman, by her last will and testament, might appoint. She appointed her son, Gilbert L. Beeckman, as such appointee.

The case was tried February 13, 1903, in the United States circuit court, southern district of New York, and the court decided against the collector without any written opinion.

The grounds on which the court based its decision were:

1. That the testatrix, Madeline Beeckman, was never in possession of the said trust fund within the terms of the act of June 13, 1898, but had at most only a naked power to nominate and appoint pursuant to the terms of the antecedent last will and testament of her father, by which the fund passed from his possession, and which last will and testament came into operation before the passage of said act of 1898, and that the power of appointment was to be read into the antecedent will as part thereof (Matter of Harbeck, 166 N. Y., 218, and authorities cited); and

2. That the said trust fund was never in fact in the charge or custody of the executors of the last will and testament of Madeline Beeckman, deceased, nor were they ever the trustees of said fund within the terms of section 29 of said act of 1898. (Pennsylvania Company, etc., *v.* McClain, 105 Fed. Rep., 367.)

No appeal was taken, and the decision was acquiesced in.

This office will hereafter follow these decisions in cases in which they apply.

Respectfully, ROBERT WILLIAMS, Jr.,
Acting Commissioner.

Mr. WM. MCCOACH, *Collector First District, Philadelphia, Pa.*

(678.)

Manufactured tobacco, snuff, and cigars exposed for sale outside of stamped packages.

[Int. Rev. Circular No. 643.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 14, 1903.

To all internal-revenue officers and others concerned:

Especial attention is hereby called to the provisions of sections 3363, 3366, 3374, and 3404, United States Revised Statutes, which are as follows:

SEC. 3363, as amended by section 31, act of October 1, 1890 (26 Stats., 567). manufactured tobacco shall be sold or offered for sale unless put up in packages

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stamped as prescribed in this chapter, except at retail by retail dealers *from the packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes;* and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

SEC. 3366. Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each offense.

SEC. 3374, among other things, provides that, "every person who * * * uses, sells, or offers for sale, or has in possession * * * any manufactured tobacco, or snuff, without proper stamps for the amount of the tax thereon being affixed and canceled; * * * shall for each such offence, respectively, be fined not less than one thousand dollars nor more than five thousand dollars and be imprisoned not less than six months nor more than two years."

SEC. 3404. Every person who purchases or receives for sale any cigars which have not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each such offense.

The language of these sections of the Revised Statutes is so plain as to hardly require explanation. Liberally construed, they permit the sale of manufactured tobacco, snuff, cigars, and cigarettes by retail dealers from the original manufacturer's stamped packages only, and require that these products must remain in such original stamped packages at all times until sold and delivered to customers.

Manufactured tobacco, snuff, cigars, and cigarettes found on the market outside of the manufacturer's packages in which they were originally packed are subject to seizure and forfeiture, and the person in whose possession the same are found is liable to prosecution, and on conviction to heavy fines and imprisonment.

From information that has reached this office it appears that the law and regulations relating to sales by jobbers and other dealers in manufactured tobacco, snuff, and cigars are quite generally disregarded and ignored, and that these articles are being exposed for sale outside the original package unprotected by the tax-paid stamps. It is the purpose of this circular to give notice to all concerned that these irregularities and violations must cease or those guilty of them must suffer the consequences.

The regulations have been modified from time to time in the interest of retail and wholesale dealers in manufactured tobacco, every advantage warranted by law being given them. To accommodate small dealers manufacturers have been authorized to put up any sized packages permitted by the statutes, so that no reason exists for the exposure of such articles outside the stamped packages.

One dealer in manufactured tobacco is not privileged to take from a manufacturer's package a portion of the contents and deliver the same unaccompanied by the tax-paid stamp to another dealer for resale; neither can a dealer lawfully receive or have in his possession manufactured tobacco, snuff, cigars, or cigarettes removed from the

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original stamped packages. Such unstamped articles exposed for sale or exhibited in show windows, show cases, glass jars, or otherwise by dealers, wholesale or retail, are forfeitable and must be seized.

Owing to the existing misunderstanding on the part of dealers in manufactured tobacco as to the requirements of the law, immediate steps will not be taken to strictly enforce the same, but an opportunity will be afforded such dealers to remedy existing evils and to get their stock of manufactured tobacco, snuff, cigars, and cigarettes in condition to fully comply with the law and regulations.

Therefore, notice is hereby given that any of such manufactured articles found on the market, exposed for sale outside of the original manufacturers' stamped packages on and after November 1, 1903, will be seized and sold pursuant to law, and such further action will be taken as the law requires or the circumstances may demand.

Internal-revenue officers are directed to give this notice the widest possible publicity in order that the necessity for seizures and prosecutions may be reduced to a minimum.

When, on or after November 1, 1903, manufactured tobacco, snuff, cigars, or cigarettes are found on the market exposed for sale outside of the original packages, the same will be seized by the proper collector or deputy collector and the facts reported to this office and to the United States district attorney, with recommendation for such action as may be deemed requisite.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(679.)

Oleomargarine.

Instructions as to entry on book Form 60 and report Form 216 when shipment is made by a manufacturer to a third party upon order of a wholesale dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 14, 1903.

SIR: In reply to your letter of the 11th instant, in which you make inquiry as to the manner of reporting a shipment of oleomargarine made by a manufacturer to a third party upon the order of a wholesale dealer, you are informed that this office holds, as heretofore, that in making such a shipment the manufacturer will enter on book Form 60 and report Form 216 the name and address of the actual consignee; also a memorandum to the effect that it is sent upon the order of a wholesale dealer, naming the dealer.

Please inform the manufacturers in your district of this ruling.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. HENRY L. HERTZ, *Collector First District, Chicago, Ill.*

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(680.)

Repacking tax-paid cigars.

Cigars upon which tax has been paid may be returned to the factory and repacked and restamped, and after inspection must be accounted for on book 73 and monthly return, Form 72, separately from other cigars. The total number of cigars to be accounted for during that month will include the number on hand at the beginning of the month and the number returned to the factory to be repacked and restamped and the number manufactured each day during the month, all of which cigars must be tax paid before removal from the factory.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 14, 1903.

SIR: In reply to your letter of the 6th instant, asking how tax-paid cigars, returned to the factory to be repacked and restamped under regulations No. 8 (pp. 36 and 37), may be accounted for, you are advised that after the cigars have been inspected and counted by the deputy collector, an entry may be made, in red ink, on book 73, under proper date, showing the number received, and a like entry on monthly return, Form 72, and separately from the number reported manufactured on that date.

An explanatory note should be made on the manufacturer's book and monthly return and on your record No. 11 to show that "the cigars were returned to the factory to be repacked and restamped." When so reported, the number so returned will appear with those reported as on hand at the beginning of the month and those reported as manufactured during the month.

The three items combined will show the total number of cigars that must be accounted for and tax paid before removal from the factory.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. FERDINAND EIDMAN,
Collector Third District, New York, N. Y.

(681.)

Executive order—Preference to veterans in appointment and retention.

[Circular No. 87—Int. Rev. No. 644.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 18, 1903.

To collectors of internal revenue:

The attention of collectors of internal revenue is respectfully invited to the following Executive order, dated January 17, 1902:

EXECUTIVE ORDER.

The attention of the Departments is hereby called to the provisions of the laws giving preference to veterans in appointment and retention.

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The President desires that, wherever the needs of the service will justify it and the law permit, preference shall be given alike in appointment and retention to honorably discharged veterans of the civil war who are fit and well qualified to perform the duties of the places which they seek or are filling.

THEODORE ROOSEVELT.

WHITE HOUSE, *January 17, 1902.*

Collectors, in making assignments to the work of gauging and recommending assignments to the work of storekeeper and storekeeper-gauger of officers who are embraced within the above order, will see to it that the spirit and intent of the order is observed, and that preference is given to honorably discharged veterans of the civil war who are fit and well qualified to perform the duties of the places named.

ROBT. WILLIAMS, JR.,
Acting Commissioner.

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(682.)

Leaf tobacco.

Modification of T. D. 20339, relating to leaf tobacco known as "Black Fat" and "Black Horse."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 21, 1903.

SIR: Some time ago you personally brought to the attention of this office the manner of handling leaf tobacco by certain leaf dealers at New Orleans who put up what is known as "Black Fat," "Black Horse," etc., and inquired whether such leaf dealers should not be considered and held to be manufacturers of tobacco on account of producing such quality of leaf tobacco.

November 17, 1898, this office ruled (see T. D. 20339) that the producers of this class of tobacco should be held to be manufacturers of tobacco, and all tobacco so manufactured, intended expressly for export, should be required to be exported in bond from the place of manufacture. It was also held that leaf tobacco and manufactured pressed tobacco could not lawfully be sold by a leaf dealer to consumers, or as supplies for vessels engaged in the coastwise trade of the United States, without the payment of the tax.

Many vigorous protests were made by the leaf dealers engaged in this business against the enforcement of the above-mentioned decision. Thereupon the office instituted a thorough investigation by making inquiries of dealers and revenue officers conversant with the class of tobacco in question, the result of which was that the decision of November 17, 1898, was materially modified by correspondence with collectors and interested leaf dealers.

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Under the modified views of the office it is held that leaf-tobacco dealers are privileged to manipulate leaf tobacco in a manner to produce the quality of tobacco known as Black Fat, etc., without qualifying as manufacturers of tobacco. They are privileged to export this product the same as other leaf tobacco without the execution of an export bond. They are permitted to sell the leaf tobacco to other leaf-tobacco dealers, manufacturers of tobacco, snuff, or cigars, and to persons known to be purchasers of leaf tobacco for export. They are not permitted to sell this class of tobacco to vessels engaged in the coastwise trade, nor to any person other than those mentioned above, without payment of the tax on the quantity thus sold. Manufacturers of tobacco, snuff, or cigars are required to account for this class of tobacco when removed for consumption or sale as manufactured tobacco and to pay the tax thereon.

Owing to the nature of this class of leaf tobacco, it is important that revenue officers pay special attention to the business of the leaf-tobacco dealers who produce the same, in order that the tax may be secured on any quantity that may be placed on the market in a manner to make the same taxable.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. N. GARNER, *Internal Revenue Agent, New Orleans, La.*

(683.)

Packing plug tobacco.

Manufacturers are authorized, under regulations No. 8, page 45, and the last two paragraphs on page 46, to put up their plug tobacco in pasteboard boxes, which shall contain not less than 1 nor more than 5 pounds of tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 21, 1903.

SIR: I have received your letter, dated 16th instant, and a sample pasteboard package containing a 5½-ounce plug of tobacco manufactured by the Continental Tobacco Company, Factory No. 74, in your district. The caution-notice label appears on this sample, and two stamps of the denominations of 3½ and 2 ounces, respectively, are affixed to the package. You ask whether this is a legal package.

In reply, you are informed that it is not a legal package and does not conform to the regulations and rulings of this office with respect to the use of pasteboard boxes as substitutes for wooden boxes for packing plug tobacco, and which packages must contain not less than 1 nor more than 5 pounds of tobacco.

Your attention is called to the last two paragraphs of the regulations No. 8, page 46, and to the inclosed copy of a letter dated June

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24, 1901, addressed to the Continental Tobacco Company, modifying a previous ruling contained in a letter dated July 7, 1899, addressed to Mr. H. C. Grenner, your predecessor in office.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. BEN WESTHUS, *Collector First District, St. Louis, Mo.*

[Inclosure.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 24, 1901.

GENTLEMEN: This office has received your letter dated 19th instant, and by registered mail a sample 2¾-ounce plug of your old Peach and Honey brand of tobacco, which you state you propose to temporarily put up in packages similar to the sample for distribution to the trade, concerning which you are advised that the regulations make no provision for 2¾-ounce packages of tobacco of any description, and your proposition to affix two stamps to each small package of tobacco is not approved.

Section 3362 of the Revised Statutes provides that all cavendish, plug, and twist tobacco shall be put up in wooden packages containing not exceeding 200 pounds of tobacco, and this statute has not been so construed as to permit manufacturers to put up small packages of plug or twist tobacco containing less than 1 pound.

The office has provided a stamp of the denomination of one-half pound and also a 1-ounce stamp with 15 1-ounce coupons attached, which are intended to be used with the 1, 2, 3, and 4 pound stamps and coupon stamps of larger denominations for stamping packages of plug and twist tobacco, when the larger stamp used will not be sufficient for the payment of the tax due on a single package. The office does not authorize manufacturers to prepare and put up their plug and twist tobacco in paper bags or small pasteboard boxes containing less than 1 pound of tobacco, nor can such packages be approved as substitutes for, or in lieu of, wooden boxes prescribed by the statute.

A manufacturer under previous rulings of this office is privileged to inclose his plugs of tobacco in tin foil and light paper wrappers upon which may be printed the trade-mark, name, or brand of tobacco, and the registered factory number, district, and State, but such parcels or plugs of tobacco must be repacked in wooden boxes, or approved boxes made from wood, metal, paper, or other substance used separately or in combination, under the regulations, series 7, No. 8, revised, page 40. Such larger packages should be properly labeled, marked, and stamped, as required when wooden boxes are used.

Respectfully, J. W. YERKES, *Commissioner.*

CONTINENTAL TOBACCO COMPANY, *New York City, N. Y.*

(684.)

Oleomargarine.

Instructions relative to preparing Forms 500 and 502.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 22, 1903.

To collectors of internal revenue:

The attention of this office has been called to the fact that some of the collectors, in making their report on Forms 500 and 502 (reports of persons who paid special tax as dealers in uncolored and colored

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oleomargarine, respectively), enter in the column of "Remarks" the words "12 months" after each name therein.

It is presumed that it means twelve months from July 1, 1903, and will be so entered. But it is requested that in future reports on Forms 500 and 502 you cause to be entered the dates at the beginning and ending of the period covered by the payment of the tax, as, for instance, July 1, 1903, to June 30, 1904, or twelve months from July 1, 1903.

J. W. YERKES, *Commissioner.*

(685.)

Packing plug tobacco.

Manufactured plug tobacco can be sold at retail only from packages properly labeled and stamped.—No authority for stamping each plug of tobacco intended for sale at retail for 5 or 10 cents.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1903.

SIR: In reply to your letter dated 22d instant, inclosing newspaper clipping calling attention to circular 643, relating to the sale of tobacco and its manufactures, you are informed that there is no provision made by law authorizing individual plugs of tobacco, intended to be sold at retail for 5 or 10 cents, to be stamped; but such tobacco must be sold at retail by retail dealers from packages properly labeled and stamped.

All manufactured plug tobacco must be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, in proper packages, and no provision is made by law or regulations for the use of any package (other than those made from wood) containing less than 1 pound of plug or twist tobacco.

A copy of circular 643 is inclosed for your further information. Your attention is also called to decision 683 (TREASURY DECISIONS, vol. 6), of date July 21, 1903, relating to packing plug tobacco.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———

(686.)

Packing tobacco.

All manufactured tobacco is required to be put up in packages containing a statutory quantity of tobacco properly labeled and stamped. Any person having manufactured tobacco in his possession, and not intended for his own use, without proper stamps for the amount of tax thereon being affixed to the packages, will incur the penalties denounced by section 3374 of the Revised Statutes of the United States.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1903.

SIR: This office has received your letter, dated 23d instant, inclosing one from a tobacco dealer in your district, presenting the question

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whether plug tobacco may be packed in unstamped sample cases for the use of salesmen; and whether the words "exposed for sale," as employed in the fourth paragraph on page 2 of circular 643, apply to sample cases.

In reply, you are advised that no provision is made by law authorizing a tobacco dealer or manufacturer to put up and prepare manufactured tobacco of any description in unstamped packages. All manufactured tobacco is required to be put up in packages, containing a statutory quantity of tobacco, properly labeled and stamped. It would be a violation of section 3374, Revised Statutes, for any person to have in his possession any manufactured tobacco (not intended for his own use) without proper stamps, for the amount of the tax thereon, being affixed to the packages.

The words "exposed for sale," as employed in circular 643, must be construed as prohibiting the use of unstamped sample cases containing plug tobacco.

Any number of pieces or small plugs of different kinds of tobacco may be put up by the manufacturer in the same package, and the whole quantity so packed must correspond with the quantity tax paid, as denoted by the stamp affixed to the package.

Your attention is called to decision 683, dated 23d instant (TREASURY DECISIONS, vol. 6), relating to the use of pasteboard boxes for packing plug tobacco.

J. W. YERKES, *Commissioner.*

Mr. FRANK MCCORD,
Collector Eighteenth District, Cleveland, Ohio.

(687.)

Delays in filing applications for regauge of bonded spirits for leakage allowances.

[Int. Rev. Circular No. 645.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 30, 1903.

To collectors of internal revenue:

In view of the delays that have occurred in the matter of filing applications for regauge of bonded spirits for leakage allowance, under the provisions of section 50, act of August 28, 1894, and the amendatory act of January 13, 1903, attention is called to section 50 of the first act named, which provides—

> That taxes shall be collected on the quantity contained in each cask or package as shown by the original gauge, where the distiller does not request a regauge before the expiration of seven years from the date of original entry or gauge.

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Upon the receipt of this circular, collectors will at once notify distillers in their respective districts, and persons representing distillers having spirits in special or general bonded warehouses, that requests for regauge will in no case be accepted unless filed within the time limited by the statute; and that applications for relief on the ground that the failure to so file such requests was due to accident, oversight, or other cause will not be considered. In this connection, attention is also called to the following instructions on page 73 of regulations No. 7, revised:

Requests for regauge should be in duplicate and should be plainly dated by the distiller, and the date of filing with the collector should be carefully recorded thereon.

To avoid the risk attending delays in filing such notices, especially in districts where large quantities of spirits are to be regauged, it is suggested that such notices be filed at least fifteen days before the expiration of the seven years from the date of the original gauge of the oldest spirits produced during a given month which then remain in the warehouse, such request to call for the regauge of each cask or package immediately at the expiration of seven years from the date of the original gauge. In no case, however, will any of the spirits embraced in the request be regauged prior to the expiration of the seven years unless upon special request of the distiller.

J. W. YERKES, *Commissioner.*

(688.)

Special tax—Liquors bought at foreclosure sale.

Where a person at a foreclosure sale of liquors bids for them in order to save a debt due him, and they are accordingly sold to him, he may sell these liquors (as having been received by him in payment of the debt) under the exempting provision of the statute, without subjecting himself to special tax, if he is not otherwise a dealer in liquors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 30, 1903.

SIR: Your letter of the 23d instant has been received, relating to a person who "has a chattel mortgage on some wines and liquors" and "desires to foreclose the mortgage and have the property sold, and, in order to save himself on the debt, will quite likely have to bid the property in."

If these wines and liquors are delivered to this person on his bid, this office, as at present advised, would regard him as receiving them in payment of his debt, and would, therefore, hold that in selling them again "in one parcel only or at public auction in parcels not less than 20 wine gallons," he would come within the exempting provision of the statute to which you refer (Compilation 1900, p. 126), and would not be required to pay special tax on account of such sale, if, in the language of the statute, he "is not otherwise a dealer in liquors."

Respectfully, J. W. YERKES, *Commissioner.*

Mr. DAVID M. DUNNE, *Collector Internal Revenue, Portland, Oreg.*

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(689.)

Official records—Testimony by collectors and deputy collectors.

Collectors and deputy collectors are not only prohibited from giving out copies from their records, but also from testifying orally, in cases not arising under the laws of the United States, as to facts that have come to their knowledge as the result of information contained in the records.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 8, 1903.

To collectors of internal revenue and others concerned:

The appended opinion of the district court of the United States for the western district of Arkansas, *in re* the discharge on habeas corpus of F. M. Lamberton, deputy collector of internal revenue, is published for the information of collectors and all others interested.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

IN THE DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION.

In re Lamberton.—Habeas corpus.

ROGERS, district judge:

F. M. Lamberton, deputy internal-revenue collector, on the 24th day of July, 1903, filed a petition in this court for a writ of habeas corpus, alleging that he is unjustly and illegally deprived of his liberty and retained in custody of D. A. Eoff, sheriff of the county of Boone, in the State of Arkansas, under and by virtue of an order of the circuit court of said county. The writ was issued and served, and on the 27th instant said sheriff filed his response, in which he sets forth that he holds the petitioner under an order of the Boone circuit court at its regular term, 1903, and makes a copy of the proceedings in that court a part of his return, and adds that "the respondent is ready in all things to obey the order of this court." The copy of the proceedings of the Boone circuit court is as follows:

"CONTEMPT OF COURT.

"*State of Arkansas, plaintiff,* v. *F. M. Lamberton, defendant.*

"On this day comes into open court the grand jury of this Boone County, Arkansas, and by said grand jury it is made known to the court that F. M. Lamberton, a deputy collector of internal revenue for district of Arkansas, had been regularly summoned to testify before said grand jury, and that the following questions were asked the said F. M. Lamberton, to which he replied in words as follows:

"Q. 1. Have you seen anyone within the past twelve months sell any whisky in Boone County, Arkansas; if so, state the name of the party or parties so selling.—A. I have not seen anyone so selling in Boone County, Arkansas, that did not have State and county license.

"Q. 2. State, as a citizen, if you have seen in Harrison, Arkansas, within the past twelve months, any U. S. retail liquor license, or any permit from the Government of the United States, posted in a conspicuous place, to sell liquor.—A. I have seen retail liquor dealers' special-tax stamps posted in conspicuous places in the town of Harrison within the last twelve months.

"Q. 3. You state you have; state the house and its owner, if you know it, and the owner of the license or permit.—A. I have never seen the special-tax stamps in Har-

rison except while acting in an official capacity, and I therefore refuse to state to whom they belonged or in whose house they were posted.

"Q. 4. If you know of your own knowledge outside of referring to official records and in an unofficial way of any sales of liquor or any person or persons being engaged in the traffic, so state and also name of the parties.—A. I do not have any such knowledge except what I have obtained in an official capacity.

"Q. 5. Did you ever visit the house of Mrs. Cromwell, in Lead Hill, Arkansas, and did you see there such a U. S. license or permit to sell liquor posted in a conspicuous place within the past year?—A. I have been at her house within the past year, but always in an official capacity. I therefore refuse to state if I have seen such license posted there.

"Q. 6. Have you seen in any drug store in Boone County, Arkansas, any such license or permit posted in a conspicuous place?—A. I have seen a retail liquor dealer's special-tax stamp in a drug store in Boone County, Arkansas, but I saw it while visiting the same in an official capacity, and therefore I can not state in whose house or whose stamp it was."

To this response of the sheriff, petitioner has filed his demurrer.

It will be seen that the only question involved is as to whether or not the Boone circuit court had the jurisdiction, power, and authority to imprison the petitioner for the refusal to answer questions 3, 4, 5, and 6 (*supra*). So far as the precise questions involved are concerned, I have not been cited to, nor been able to find, any direct authority. So far as the principle involved is concerned, there is a conflict of authorities. If the principle involved presented an original question, I should feel constrained to remand the prisoner to the custody of the sheriff. Reluctantly I have reached the conclusion that he must be discharged.

The information which the State seeks in this case is to enable it to punish its own citizen for the violation of its own laws. The information is within the knowledge of the petitioner, who is the deputy internal-revenue collector, and was acquired by him while in the discharge of his official duties. It was within the scope of his official duties that he should know the very facts the disclosure of which by him is sought. He does not decline to answer because of any reason personal to himself, but because he is directed by his superior officers not to do so. He can not, of course, justify his refusal under instructions which his superiors had no power or authority to make. This raises the question as to whether his superiors have such power, and if so, whether it has been exercised by making regulations prohibiting the disclosures sought. If this power exists, it must be found in the statutes; if it has been exercised, it must be found in the regulations made in pursuance thereof by those having power to make them. Revised Statutes, section 3244 requires that all retail liquor dealers shall pay a special tax; Revised Statutes, section 3238 requires that this special tax shall be paid by stamps denoting the tax.

Revised Statutes, section 3240 provides that "each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid."

Revised Statutes, section 3239 provides that "every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, except tobacco peddlers, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax, and any person who shall, through negligence, fail to so place and keep said [*stamp*] [stamps], shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than ten dollars. And where the failure to comply with the foregoing provision of law shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed." * * *

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Revised Statutes, section 3164 requires every internal-revenue collector "to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which may come to his knowledge from time to time, stating the provisions of the law believed to be violated and on which a reliance may be had for condemnation or conviction," * * * and, upon failure to do so, he forfeits his right to any compensation, benefit, or allowance.

Revised Statutes, section 3169 inflicts the penalty of dismissal from office and a fine of not less than one or more than five thousand dollars, and imprisonment not less than six months or more than three years upon any revenue officer who negligently or dishonestly permits any violation of the law by any other person.

The reading of these statutes will make it clear that one of the duties imposed upon a deputy internal-revenue collector is to see to it that retail liquor dealers shall place and keep conspicuously in their establishments or places of business stamps denoting the payment of said special tax (sec. 3239); and that the failure of the person who paid the special tax to comply with this provision of the statute subjects him to a penalty. It is therefore manifest that the information obtained by the internal-revenue collector, and which he was required by the Boone circuit court to disclose, was information clearly within the scope of his official duties and within the sections of the statute to which I have referred, and tend to show what is required of the internal-revenue collector, as well as, in a measure, to indicate the public policy of the United States.

Revised Statutes, section 251 provides "The Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive Treasury notes, United States notes, or other securities of the United States, or who may be in any way engaged or employed in the preparation and issue of the same, as he shall deem best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss; he shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistant with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws, or in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing." * * *

Revised Statutes, section 321 provides that "The Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by any law providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue." * * *

In pursuance of section 251, under date April 15, 1898, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated certain regulations for the government of the collectors of internal revenue as follows:

"All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special-tax records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to subpœnaes *duces tecum* or otherwise. Whenever such subpœnaes shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department. The information contained in the records relating to special-tax payers in the collector's office is fr

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nished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records or of any copies thereof for use against the special-tax payers in cases not arising under the laws of the United States. The giving out of such records or any copies thereof by a collector in such cases is held to be contrary to public policy, and not to be permitted. As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them or any copies thereof at the request of any person. Where copies are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in Rule X of the rules and regulations of the Treasury Department, namely:

"In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained, collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the Department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which make it necessary to decline, in the interest of the public service, to furnish such a copy." John T. Boske, sheriff of Kenton County, Ky. *v.* D. M. Comingore (177 U. S., 459).

No doubt can be entertained as to the power of the Secretary of the Treasury, or of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to promulgate this order, the validity of which is upheld in the above case. It will be seen by a careful reading of this regulation of the Treasury Department that it does not cover precisely the questions to which answers are sought in this case. It related to the giving of information within the knowledge of the internal-revenue collector of Kentucky, and found in the records of his office, and all of the case, so far as I have been able to find, related to information contained in the records of the office of the internal-revenue collector.

In re Huttman (70 Fed. Rep., 699); *In re* Weeks (82 Fed. Rep., 729); *In re* Comingore (96 Fed. Rep., 552), affirmed in Boske *v.* Comingore (177 U. S., 459).

Opposed to the views expressed in the above opinion is the case of *In re* Hirsch (74 Fed. Rep., 928).

While the precise question involved in this case is not decided in any of these cases, I have been unable to distinguish between the principle decided and the principle involved in the case at bar. The very fact that the retail liquor dealer's stamp was required to be posted by the persons buying, in their establishment or place of business, came to the knowledge of the revenue collector by reason of the person buying it, making application therefor, and the issuance of it, and the record made of it was all contained within the files and records of the collector's office. Having obtained this information in that way, the collector or his deputy, as will be seen by an examination of the section of the statute above referred to, is required to proceed to the place where these stamps are required to be put up, in order that they may see whether the tax stamp was posted, as required by section 3239, Revised Statutes, United States. But for such knowledge on the part of the collector or his deputy neither the one nor the other, in all probability, would have visited the place where these special-tax stamps are required to be posted. The information, therefore, acquired by the deputy revenue collector or in the beginning is traceable to the records of the collector's office. It has been distinctly held, in the case of Boske *v.* Comingore (*supra*), that the officers in charge of these records can not be compelled to disclose their contents. It would be a manifest invasion of the principle decided if the court should ld to the letter of the law and decide that the internal-revenue collector can not be

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required to produce his records, or disclose what they contain, but at the same time disregard the reason and hold that he can be compelled to disclose what he has discovered in the discharge of his duties as the result of information contained in the records. If the one is privileged, clearly the other is. It would therefore seem that the principle involved in the case at bar can not be fairly distinguished from the Comingore case. The result necessarily is that the defendant must be discharged.

FORT SMITH, ARK., *July 28, 1903*

(690.)

Special tax—Barley brew or bok ale.

A beverage containing but an infinitesimal quantity of alcohol, and (although in color and flavor it has a general resemblance to malt liquor) not being, in fact, such a fermented liquor as section 3339, Revised Statutes, describes, is not taxed under the internal-revenue laws of the United States, nor is special tax required to be paid for its sale.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 12, 1903.

GENTLEMEN: A sample of a beverage submitted to this office by your representative, ——— ———, imported by you into this country and sold under the name of "barley brew or bok ale," has been analyzed by the chemist here, who reports to this office under date of the 10th instant that it contains .53 per cent of alcohol by volume, .42 by weight, and .48 per cent of total solid matter, and that "while it has, in general, the appearance and flavor of a malt liquor," it is rather an imitation of a malt liquor than the thing itself.

In view of the results thus shown by the chemist's analysis, this office holds that the beverage in question, put upon the market in the precise condition of the sample herein described, is not among those fermented liquors enumerated in section 3339, Revised Statutes of the United States, and that therefore tax is not required thereon, nor the special tax of a dealer in malt liquor for its sale, under the internal-revenue laws of the United States.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

To ——— ———.

(691.)

Special-tax return—Sickness or absence.

If a special-tax payer entrusts his return to an attorney for delivery to the collector instead of delivering it himself, he does so at his own risk; and if, by reason of sickness or absence of the attorney, the return is not within the hands of the collector within the calendar month in which the liability began, a 50 per cent penalty is incurred.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 21, 1903.

SIR: In reply to your letter of inquiry of the 18th instant, you are hereby advised that the uniform ruling of this office has been th

the sworn return required of special-tax payers, under the internal-revenue laws of the United States, must be made by the special-tax payers themselves to the collector. If, therefore, a special-tax payer, as in the case which you submit, instead of thus making his return, places it in the hands of his attorney, and the latter, by reason of sickness, fails to put it into the hands of the collector within the calendar month in which the liability began, the penalty of 50 per cent under section 3176, Revised Statutes, is incurred, and there is no relief therefrom on account of the attorney's sickness.

The excuse of "sickness or absence," which that section permits to be accepted as relieving from this penalty, relates only to the sickness or absence of the special-tax payer himself. If he is neither sick nor absent, there is nothing to prevent the special-tax payer from making his sworn return directly to the collector. If he does not thus make his return, but entrusts it to an attorney, he does so at his own risk.

Respectfully, J. C. WHEELER, *Acting Commissioner.*

Mr. DELCOUR S. POTTER,
United States Commissioner, Glens Falls, N. Y.

(692.)

Imprinted checks and drafts.

Imprinted checks and drafts can not now be returned to the owners after redemption of the stamps thereon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 27, 1903.

GENTLEMEN: Your letter of the 24th instant, requesting the return to you, after cancellation of the stamps thereon, of 1,000 imprinted checks forwarded with your claim, Form 38, on July 13, 1903, has been received.

In reply, you are advised that the authority granted this office to return imprinted checks to the owners thereof, after the redemption and cancellation of the stamps thereon, no longer exists.

The act of Congress approved February 26, 1902, under the provisions of which imprinted instruments were returned to the owners thereof, authorizes such action only "where said return is demanded within one year after the passage of this Act," and provides that—

All such checks, drafts, etc., remaining unclaimed by the owners at the expiration of one year after the passage of this Act shall be destroyed in such manner as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Furthermore, the appropriation to cover cost of cancellation, boxing, and other expenses incident to the return of such checks, made by act of April 22, 1902, was available only until June 30, 1903.

It is, therefore, apparent that this office is now without either authority or means to return imprinted instruments to claimants,

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and that such instruments now on hand must, after the redemption of the stamps thereon, be destroyed under the latter provision of the act of February 26, above mentioned.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———.

(693.)

Special tax—Wholesale malt liquor dealer changing to wholesale liquor dealer.

A person who has carried on business as a wholesale dealer in malt liquors throughout the month of July, and thereafter changes his business to that of a wholesale liquor dealer, and pays special tax accordingly, is not granted by the law any rebate or allowance on account of the special-tax stamp taken out by him in July for the year beginning July 1, notwithstanding the fact that he has no further use for this stamp, by reason of having taken out another special-tax stamp to cover his business as a wholesale liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 14, 1903.

SIR: Your letter of the 3d instant has been received, concerning a person in your district who, having paid special tax as a wholesale dealer in malt liquors for the year beginning July 1, 1903, and having, as it is understood, carried on this business under that special-tax stamp throughout the months of July and August, 1903, "is now desirous of changing his business to that of a wholesale liquor dealer for the remainder of the present fiscal year."

You will please inform this person, in reply to the inquiry which he makes, that he can not by reason of now paying special tax as a wholesale liquor dealer, have the special-tax stamp which he now holds as a wholesale dealer in malt liquors redeemed, or even, as he suggests, "partially redeemed."

The business carried on by him in July and August, namely, the sale of malt liquors in quantities of 5 gallons or more without the sale of distilled spirits or wines in such quantities is, by the internal-revenue laws, made a distinct and separate business from that of wholesale liquor dealer, and when he engaged in that business in July, by the provisions of section 3237 he was required to pay special tax for the entire year; and there is no provision of law whereby any allowance or rebate can be made of any part of this tax by reason of his having in the month of September engaged in the business of wholesale liquor dealer, paying special tax therefor, although this latter business includes the sale of malt liquor by wholesale, as well as that of distilled spirits and wine.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. FRANK MCCORD,
Collector Internal Revenue, Cleveland, Ohio.

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(694.)

Special tax—Retailing liquor on a United States reservation.

A special-tax stamp taken out under the internal-revenue laws by any person as a liquor dealer can not protect him from the consequences of selling alcoholic liquor on a forest reservation, or at any place where such sales are prohibited by other laws or regulations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 14, 1903.

SIR: Replying to the inquiry addressed to you by ——— ———, retail liquor dealer, who has been engaged in "selling distilled spirits on a United States reservation and has been ordered off by a forest supervisor," which you refer to this office in your letter of the 21st ultimo, will you please inform him that the internal-revenue tax stamp issued to him affords him no protection whatever from the consequences of selling alcoholic liquors in any place where such sales are prohibited by other laws or regulations. (Sec. 3243, R. S.)

The Secretary of the Interior, to whose Department your inquiry in regard to sales of alcoholic liquors on forest reservations was referred, has under date of the 8th instant sent to me a copy of a letter on this subject, addressed to him by the Commissioner of the General Land Office, wherein the Commissioner of that office says:

* * * It is unlawful for any person or association of persons to occupy or use any public lands within the boundaries of any forest reserve established under section 24 of the act of March 3, 1891, excepting for purposes of mining and prospecting for minerals, without special permit from the Secretary of the Interior; and that, following the past policy of the Department in this regard, permit will in no case be granted for establishing or conducting a saloon, or for the sale of intoxicating liquors, upon public lands within a forest reserve.

Please so inform your deputies and all others within your district interested in the question.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. A. L. MORRISON,
Collector Internal Revenue, Santa Fe, N. Mex.

(695.)

Assessment of legacy tax on remainder interests under the revenue act of June 13, 1898.

[Int. Rev. Circular No. 646.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 14, 1903.

To collectors of internal revenue:

Pending the decision of the courts as to the taxability of remainder interests under the revenue act of June 13, 1898, as amended by the

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act of June 27, 1902, the tax on all such interests (including second life interests) vested prior to July 1, 1902, although not absolutely vested in possession or enjoyment prior to that date, will be assessed as heretofore.

The collection of the tax so assessed may, however, be delayed, pending the decision of the courts, if claim for abatement is filed. In making formal demand for payment, collectors will, however, notify executors, administrators, or trustees, on whom such demand is made, that penalty and interest imposed by section 3184, Revised Statutes, will be incurred by nonpayment within the prescribed time, if the assessment made is sustained by the courts. Where payment of such tax is made on demand, the collector will notify the executors, administrators, or trustees that claim for refund may be made under section 3220, Revised Statutes, if presented within the time limited by section 3228, Revised Statutes.

J. W. YERKES, *Commissioner.*

(696.)

Refilling with spirits bottles previously used for bottling spirits in bond, without destroying the stamps.

[Int. Rev. Circular No. 647.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 19, 1903.

To collectors of internal revenue and revenue agents:

Recent reports received at this office indicate a growing tendency on the part of some persons who are engaged in the sale of distilled spirits to refill with spirits bottles which had once been filled and stamped under the provisions of section 6 of the act of March 3, 1897.

The law referred to provides:

SEC. 6. That any person who shall reuse any stamp provided under this Act after the same shall have been once affixed to a bottle as provided herein, or who shall reuse a bottle for the purpose of containing distilled spirits which had once been filled and stamped under the provisions of this Act without removing and destroying the stamp so previously affixed to such bottle, * * * shall for each such offense be fined not less than one hundred nor more than one thousand dollars and be imprisoned not more than two years in the discretion of the court, and such spirits shall be forfeited to the United States.

While the reuse of a bottle for the purpose of containing spirits which had once been filled and stamped under the act referred to without destroying the stamp previously affixed to such bottle may not result in fraud upon the Government, it involves a gross violation of law and enables the offender to impose upon the public by disposing of a cheap and inferior grade of whisky, different in quality and alcoholic strength from the original contents, at a price equal to

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the whisky of standard strength and quality represented by the stamp and contained in the bottle when the stamp was affixed.

Collectors and agents will see that the law in this respect is complied with and that those who violate the same are reported for prosecution.

J. W. YERKES, *Commissioner.*

(697.)

Bonds of storekeeper-gaugers.

Bonds given by a storekeeper-gauger at the time of his probationary appointment are given for the period of that appointment only. Bonds of these officers are renewable every four years; and when in pursuance of the law making this requirement a new bond is filed and accepted it takes the place of the former bond, and the liability of sureties on the former bond for future acts ceases.—Bonds cumulative when given voluntarily during the four-year period without request for same.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 15, 1903.

SIR: Your letter of the 27th ultimo, addressed to the Secretary of the Treasury, relating to the bonds of ——— ———, as storekeeper-gaugers in the ——— district of ———, given, respectively, March 17, 1898, and March 30, 1898, has been referred by him to me and carefully considered. * * *

In reply, you are advised that I have held that the bond given by a storekeeper-gauger at the time of his probationary appointment is given for the period of that appointment only, and that upon his subsequent regular appointment a new bond is required.

The Dockery Act (28 Stats., 807) provides that—

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary.

Under that statute, which I regard as mandatory outside the exemptions especially provided therein, I believe that I must cause all bonds given by storekeeper-gaugers to be renewed every four years, and as much oftener as I may deem a renewal necessary, and that when a new bond is thus given by a storekeeper-gauger it takes the place of the bond theretofore in force. Bonds given by storekeeper-gaugers voluntarily during the continuance of a four-year period without request for the same from me will, however, be regarded as merely cumulative and not as taking the place of or relieving the liability of sureties on the bond then in force for that period. But the act to which I have referred, it should be noted, provides further—

That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States.

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And further—

That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal.

While official bonds are generally held by the authorities to be in force during the entire term of office of the bonded official, yet when a bond is given by an officer whose appointment is not for any specified term of years, as is the case with storekeeper-gaugers, it is my opinion that the act above cited marks the limit of liability of the sureties on such a bond, and I therefore hold that when in pursuance of that act a new bond is required and filed by a storekeeper-gauger and accepted by me the liability of the sureties on the former bond as to all future acts of the principal named therein ceases.

The facts in the present case as disclosed by our records are that storekeeper-gaugers ——— ——— gave bond with the American Bonding and Trust Company of Baltimore City as surety on March 17 and 30, 1898, respectively, to cover the period of their probationary appointment. On November 17 and 18, 1898, these two storekeeper-gaugers gave new bonds with the American Bonding and Trust Company of Baltimore City as surety, these bonds being given upon their regular appointment. At the end of this four-year period new bonds were required of these storekeeper-gaugers and were given by them on November 17 and 14, 1902, respectively, with other sureties thereon.

It will be observed that under these facts the bonds of the storekeeper-gaugers in question given by your company on November 17 and 18, 1898, were not in force after November 17 and 18, 1902, respectively—that is, after the expiration of the four-year period for which they were given, and after new bonds had been required and had been filed by these two principals and accepted by me.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. DANIEL COMBS, *Baltimore, Md.*

(698.)

Oleomargarine—Retail dealers' packages.

Retail dealers must sell oleomargarine only from original stamped packages in quantities not exceeding 10 pounds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 16, 1903.

SIR: Your attention is called to section 6 of the act of August 2, 1886, which provides that retail dealers in oleomargarine must sell only from original stamped packages in quantities not exceeding 10 pounds, etc.

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A retail dealer in oleomargarine is permitted by the section above named to sell as much as 10 pounds of oleomargarine at one sale; but as the same section requires him to sell it from the original stamped package, and section 3 of the act precludes his selling the original stamped package without payment of special tax by him as a wholesale dealer, the only course for him to pursue under these circumstances is to sell this quantity directly from the original stamped package, and deliver it in another package, properly marked and branded, to the purchaser.

As it appears that certain dealers in oleomargarine claim to have been misinformed in regard to this matter, you will please take pains to instruct all retail dealers in oleomargarine in your district in regard to the laws and regulations on this subject.

Respectfully, J. W. YERKES, *Commissioner.*

——— ———,
Collector Internal Revenue.

(699.)

Special tax—Taking orders for beer on commission.

A person who takes orders for beer and the money in payment therefor and transmits the orders and money to a brewer, who makes the sales and shipments directly to the persons giving the orders, is not required to pay special tax therefor, even though he receives a commission from the brewer on these orders.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 17, 1903.

SIR: Your letter of the 19th ultimo has been received, inquiring whether a person is "liable to special tax who receives orders for beer in various quantities, accepts the money in payment for such orders, forwards said orders and money to the brewer, who ships direct to the party giving the order and pays the person who sends in the order a certain sum per case or keg, as the case may be, for transacting the business."

The person to whom you refer is not liable on this account. He does not sell the beer or offer it for sale, but simply solicits orders therefor and transmits these orders to the brewer who himself completes the sales.

The fact that the person in question receives a commission from the brewer on each case or keg of beer for which he obtains an order does not involve him in special-tax liability under the internal-revenue laws.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. J. U. SAMMIS, *Collector Internal Revenue, Dubuque, Iowa.*

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(700.)

Cavendish, plug, twist, and leaf tobacco—Putting up, stamping, and labeling—Regulations amended.

[Circular No. 110.—Int. Rev. No. 648.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 23, 1903.

To officers of internal revenue and others concerned:

In order to meet what appears to be a reasonable and legitimate request on the part of manufacturers of tobacco for a modification of existing regulations in such a manner as to permit of the putting up of packages of cavendish, plug, and twist tobacco of small denominations for use as samples which may be properly distributed through the mails or otherwise, the following is hereby promulgated:

The use of strips stamps for tobacco of the denominations of 1, 1⅔, 2, 2½, 3, 3½, 4, 8, and 16 ounces on packages of cavendish, plug, twist, or leaf tobacco is permitted, and such tobacco shall be put up in packages of suitable materials containing the exact quantity of tobacco as represented by the stamp affixed thereto.

Each such package of the above denominations, whether of wood, paper, or other material, must have securely affixed thereto the proper stamp conforming to the weight of the contents and so attached as to effectually seal the same and render it impossible to open the package or remove its contents without destroying or breaking the stamp.

Each stamp shall be canceled by writing or imprinting thereon the name of the manufacturer and registered number, the number of the district and State in which the factory is situated, and the date of cancellation, including month and year.

There must be affixed to or printed upon each such stamped package the caution notice required by section 3364, Revised Statutes, and such notice shall be separate and independent of any other printed matter, as set forth on page 46, regulation No. 8, revised July 1, 1903.

Packages of cloth, flimsy paper, or light wrapping paper are not such as are required to comply with this circular, which contemplates that material of a substantial nature shall be used for packages containing cavendish, plug, or twist tobacco, after the same have been submitted to the Commissioner of Internal Revenue and approved by him, as provided in regulation No. 8, page 45.

J. W. YERKES, *Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

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(701.)

Distilled spirits—Forfeiture.

Decision of Judge Amidon, United States district court, eastern district of Missouri, in the case of United States *v.* Three Packages of Distilled Spirits, A. Graf & Co., claimants.—The addition to packages of double-stamped spirits of burnt sugar, caramel, or other materials constitutes a violation of section 3455, Revised Statutes, and renders the goods liable to forfeiture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 26, 1903.

To collectors of internal revenue and others concerned:

The appended opinion of the United States district court for the eastern judicial district of Missouri is published for the information of collectors, agents, and others.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

United States ex rel., etc., v. Three Packages of Distilled Spirits, A. Graf & Co., claimant.

AMIDON, *J.*:

This is an information filed by the United States seeking the forfeiture of three packages of distilled spirits for an alleged violation of section 3455 of the Revised Statutes. The evidence shows that the distilled spirits in question were produced in the State of Kentucky. When they were withdrawn from the receiving cisterns at the distillery, the casks in which they were stored were stamped in accordance with section 3287, and at the time they were withdrawn from the warehouse the casks were further stamped in accordance with section 3294. The liquors were, therefore, what are known as two-stamp liquors. Thereafter, under the regulation of the Commissioner of Internal Revenue permitting such reduction, a quantity of water was added to the distilled spirits whereby their proof was reduced from about one hundred to ninety. This was done on the premises of a duly qualified wholesale liquor dealer in the presence of a Government guager, who affixed to the cask the stamp required by said regulation. It is charged by the Government that after this was done a quantity of burnt sugar or caramel was surreptitiously added to the liquors, whereby the color was restored to what it was before the proof had been reduced, and thereafter the packages with their contents were sold. It is this addition of burnt sugar or caramel and the subsequent sale which the Government claims constitutes a violation of section 3455. A demurrer was interposed to the information and overruled. At the close of all the evidence the claimant moved the court to direct the jury to return a verdict in its favor, which motion was denied, and thereafter a verdict was returned in favor of the Government. On the present motion for a new trial it is not contended by counsel for claimants that the evidence was not sufficient to require the submission of the case to the jury; but the position now taken is the same as that urged upon the demurrer and the motion for a directed verdict, namely, conceding that the charge of the Government is proved, still the facts constitute no violation of law.

So far as I know, this is the first time that the precise question now raised has been presented to a court for determination. A large number of cases have arisen under section 3289 of the Revised Statutes, and it is urged that those cases are decisive of the one at bar. I do not so regard them. Section 3289 reads: "All distilled spirits found in any cask or package containing five gallons or more without having thereon

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each mark and stamp required therefor by law shall be forfeited to the United States." Among the cases which have arisen under this section are United States *v.* Three Packages of Distilled Spirits (14 Fed. Rep., 569); United States *v.* Fourteen Packages of Whisky (66 Fed. Rep., 984); United States *v.* One Package of Distilled Spirits (88 Fed. Rep., 856). An examination of these cases will show that the only point decided by them was this: The only marks or stamps "required by law" are those specified in sections 3287 and 3295. In each of the cases referred to those stamps were found upon the casks. It was claimed by the Government that because the liquors at the time they were seized did not correspond as to proof with the stamps that they were therefore subject to forfeiture. The courts held that this was not the true construction of section 3289; but that the stamps mentioned were to speak as of the time they were affixed to the casks. At that time they spoke the truth. If the contents of the casks were thereafter changed, either by natural causes or by artificial means, this change could not bring the liquors within the scope of section 3289. In the case of the United States *v.* One Package of Distilled Sprits (88 Fed. Rep., 856), the same contention was made with respect to the regulations prescribed by the President and the heads of departments under section 3287, but the court there properly held that, while these departmental regulations could be made for the purpose of carrying existing laws into effect, a violation of such regulations could not be made by the regulations themselves a ground of forfeiture. The opinion in this last case contains the following statement: "In quite a line of decisions the courts of the United States have held that the addition of water or sugar to a package of distilled spirits on which the tax has been previously paid is no violation of law and does not work a forfeiture of the spirits." This remark is purely obiter, and finds no support whatever, so far as the addition of sugar is concerned, in the authorities cited.

The only case in which section 3455 has been brought under direct judicial consideration is United States *v.* Nine Packages of Distilled Spirits (51 Fed. Rep., 191). This case arose on a demurrer to an information which charged that the packages in question, at the time they were sold, contained "something else than the contents that were in the packages when they were stamped, to wit, other distilled spirits of a different and lower proof and quality." It was there held that this information charged an offense under section 3455. That was the only question decided, but the court further states "to avoid any misconception" that the addition of water would not constitute a violation of this section. This remark is purely obiter, and the opinion contains no statement of the reasons for the holding. It is, however, susceptible of entire justification. I think it exceedingly doubtful whether the addition of water would not constitute a violation of section 3455 for reasons which I will explain later. But I do not think the Government, after having promulgated a regulation authorizing the reduction of proof by the addition of water, could claim a forfeiture upon that ground.

The provisions of section 3455 which are pertinent to the present case read as follows:

"Whenever any person sells any barrels stamped, branded or marked in any way so as to show that the contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the Internal Revenue law has been complied with, said barrel being empty or containing anything else than the contents which were therein when said liquor had been so lawfully stamped, branded or marked by an officer of the revenue, he shall be liable." * * *

This clause of the law deals with two kinds of vessels. First, those that are empty, and it is made unlawful to sell any such vessel while it bears the Government stamps or brands. That is the first feature. The second makes it unlawful to sell any vessel thus branded if it contains "anything else" than the contents which were therein when said liquors were lawfully stamped and branded. I should think that langua(

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too plain for construction if the internal-revenue department had not seen fit to promulgate the regulation above referred to. "Anything else" would include water or sugar or wine or whisky or coloring matter. It is as comprehensive as language can be made. But the internal-revenue department, under the section giving it power to make rules and regulations, has seen fit to make a rule or regulation on this subject which permits the reduction of the proof of liquors by the addition of water after the stamps have been affixed. It was explained upon the argument of the present case that this rule was promulgated for the purpose of placing distillers in the United States and dealers in liquors distilled in the United States on an equality with persons handling the same kind of distilled spirits which were imported from foreign countries. Such imported liquors were not subject to the regulations of the internal-revenue law. The importer or dealer in them was at liberty to treat them in whatever manner he saw fit. This led to serious complaints by American distillers and those handling liquors produced in this country. To meet that difficulty the regulation was made. The careful language in which it is framed, however, shows that the officers of the internal revenue appreciated the danger of its abuse, and threw about the permission granted every protection possible. The rule requires that such reduction of proof shall be made in the presence of a Government gauger either at a distillery or a Government warehouse or upon tne premises of a duly qualified wholesale liquor dealer. Written application is required for permission to make the reduction, and the Government gauger is directed to stencil upon the vessel his name and title and between the name and title words and letters showing unmistakably the change that has been made.

I think it may be seriously doubted whether this regulation is valid. Of course it is not if it is in conflict with section 3455. United States *v.* Two Hundred Barrels of Whisky (95 U. S., 571) and United States *v.* Eaton (144 U S , 677). But the Government, having through its officers in charge of the internal revenue promulgated the regulation permitting the reduction, would be estopped to claim a forfeiture of liquors for an act done in conformity therewith. This was probably the ground of the remark of the court in 51 Federal Reports (p. 191), "that the addition of water would not subject the liquors to forfeiture." The estoppel of the regulation, however, is not broader than the regulation itself. It does not permit the addition of anything except water, and can not, therefore, be put forward as a justification for the addition of caramel or burnt sugar or other coloring matter.

It is said in many of the decisions to which reference has already been made that the primary object of the internal-revenue law is to prevent frauds upon the revenue. That is no doubt true. but what will best accomplish that purpose is a matter for legislative not judicial discretion. In the judgment of Congress, there were many classes of acts which ought to be prohibited because of the possibility of their being done for the purpose of defrauding the revenue. These provisions of the statute were made not for the reason that none of the prohibited acts could be done without defrauding the revenue, but because some acts falling within the class would be done for that unlawful purpose. Now, in the trial of any given case it would be no defense that no fraud upon the revenue was in fact intended or accomplished by a forbidden act. The courts are bound to enforce the law as it is written and not to pare down its specific mandates by a consideration of the general purpose for which the law was adopted. The primary purpose of many of these regulations is to save the Government from being brought to a trial of the question whether the intent was to defraud the revenue or whether any such result has been attained ; for in the trial of such an issue all the knowledge and all the evidence are in the possession of the defendant, and whether his act in fact defrauded the revenue would be exceedingly difficult for the Government to establish in court. The evidence in this case is persuasive on that subject. The record shows that chemists of national reputation were in direct conflict as to whether any sugar or caramel had in fact been added to the packages complained of. Now, if in addition to proving the fact that "something else" had been added to the package, the Gov-

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ernment was put to the proof of intent and to the further proof that by the act complained of the revenue had been defrauded, an issue would be raised in which the Government could rarely make out its case. The whole scheme of the internal-revenue law contemplates that at every change that takes place in distilled spirits, except such as arise by natural causes, a Government officer shall be present and shall register upon the vessel containing the distilled spirits the change that is made, so that, as Judge Thayer well remarks, "the Government can readily trace the origin and history of each cask and thus prevent frauds upon the revenue." If changes could be made in the absence of the officer, and the owner of the distilled spirits could escape liability by proof of an honest intent and that his act had in no way defrauded the revenue, it would be well-nigh impossible for the Government ever to establish a case. Its only proof would be such as could be derived from a chemical analysis of the contents of the package, while the defendant would not only be permitted to resort to the same evidence, but could further add the direct and positive testimony of himself and his employees. It needs but a moment's consideration to see that an act coming within the terms of the statute could not be justified, though done with an honest intent and without any actual loss to the Government. Take the very statute we are considering. If the owner of a vessel which had been used for distilled spirits, and which bore the stamps required by law, the same being empty, should sell it for the purpose of storing vinegar, the intent would be honest and no fraud would be perpetrated upon the revenue, but no one would contend that the act would not constitute a violation of the first clause of this section. Learned counsel for claimants urges that the "anything else" referred to in the statute must possess these qualities: (1) It must be something put in to be sold under the stamps; (2) the contents must be a different thing in its entirety; (3) it must be something subject to tax. Assume that the officers of the internal revenue have discovered a vessel containing distilled spirits which have been tampered with after the official stamps were affixed, and that in order to make out a case under section 3455 of the Revised Statutes the Government will have to establish by a preponderance of the evidence that the substance which has been added to the distilled spirits possesses these attributes, or that the case of the Government would be defeated by a claimant who could prove that the substance added did not possess all these elements, and it will be manifest at once that the statute would be rendered of no practical force or effect. As was said by the court in Michel *v.* Nunn (101 Fed. Rep., 428), "if we begin to determine what sort of materials are meant; if we say that water and sugar and blackberry juice, and orange juice and lemon juice are not materials within the sense of the act, the trouble is to find a stopping place, and show what will be a material within the meaning of the act." If the Government finds that the liquors have been altered by the addition of something else than was in the vessel at the time it was stamped and branded, how is it to prove that that something else is an article subject to the payment of an internal revenue tax? If we say that anything which is not subject to such tax may be introduced, then not only coloring matter, but any chemical compound which would affect either the taste or the appearance of the liquid could be added, and in any given case it would be quite impossible to show whether that which was added was other distilled spirits or some chemical substitute. It is because of the difficulty of proving what has been put into the liquors, and because all the direct evidence in relation to the fraud, if a fraud is committed, would be in the control of the party who would profit by it, that Congress has wisely seen fit to forbid in unqualified terms the addition of anything, and it is impossible to find any practical criterion less absolute than the statute itself.

It is suggested by counsel for claimants that the internal-revenue officers virtually repudiated the holding of the court in Michel *v.* Nunn (101 Fed. Rep., 428), because, after that case was decided, they permitted, by a regulation, the addition of burnt sugar to fruit brandy. This regulation, however, was made under the authority expressly conferred for that purpose by section 3255 of the Revised Statutes as amended by the act approved June 3, 1896 (see vol. 29, U. S. Stat. L., p. 195).

The motion for new trial is therefore denied.

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(702.)

Suits and prosecutions.

It is the duty of collectors of internal revenue to look after cases in suit, to keep advised of the status of each case, watch its progress, consult with the district attorney as occasion may require, and furnish him with necessary information.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 26, 1903.

SIR: Your letter of the 17th instant, in regard to the case of ——— ———, has been received.

Your attention is invited to regulations, series 7, No. 12, revised (p. 27), under head of "Duty of collectors to look after cases in suit.' Collectors are there instructed not to make the mistake of supposing that no further action is required of them after reporting the cases to the district attorney. The duties of collectors do not cease when they have referred taxes to the district attorney for collection by suit, or when prosecutions have been instituted. They are expected to keep advised of the status of each case, watch its progress, consult with the district attorney respecting it as the occasion may require, and furnish him with the necessary information.

In case of delay in bringing cases to trial, the cause should be ascertained and reported to this office by the collector.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JOHN C. LYNCH,
Collector First District, San Francisco, Cal.

(703.)

Instructions to United States marshals.

On the 1st day of October United States marshals will report to the Commissioner of Internal Revenue the status of all judgment debtors of the United States under the internal-revenue laws within their respective districts as ascertained or known to them.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 28, 1903.

To United States marshals:

The attention of United States marshals is directed to the regulations issued by this office, series 7, No. 12, revised (p. 17), under the head of "Collection of judgments, etc.," the last paragraph of which is as follows:

On the 1st day of October in each year marshals will report to the Commissioner the situation of all judgment debtors of the United States under the internal-revenue laws within their respective districts, so far as they have any knowledge upon the subject, and will advise such proceedings in the premises as they shall deem proper.

This office requests that the reports herein referred to be forwarded as soon as practicable.

J. W. YERKES, *Commissioner.*

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(704.)

Redemption of documentary and proprietary stamps.

[Int. Rev. Circular No. 596, revised October 1, 1903.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 1, 1903.

To collectors of internal revenue and others concerned:

Unused documentary and proprietary stamps, issued under the provisions of the war-revenue act, approved June 13, 1898, for which the owners have no use, may be redeemed, but in all cases there will be deducted the percentage, if any, allowed the purchaser. Application for the redemption of such stamps should be made to the collector of internal revenue from whom the same were purchased, who will supply the applicant with Form 38 and necessary instructions relative to the preparation of his claim.

Claims for the redemption of adhesive documentary and proprietary stamps, if purchased from a collector, must contain his certificate as to the date and amount of purchase. If purchased from a dealer in stamps, such dealer's certificate as to the date of sale to claimant and the certificate of the collector as to date of sale to the dealer must be furnished. Stamps that are not in the same condition as when issued will not be redeemed unless their condition is satisfactorily accounted for.

Documentary and proprietary stamps can be redeemed only when presented in quantities of $2 or more face value, and no claim for the redemption of or allowance for such stamps can be allowed unless presented prior to July 1, 1904.

All claims for the redemption of stamps imprinted on checks, drafts, and other instruments must be entered of record and forwarded to this office by the collector of the district in which the order for the imprinting of the stamps was purchased. If the claimant resides in a district other than that in which said order was purchased, his claim should be prepared and deposited with the collector of the district in which he resides, who will examine said claim and see that it is properly prepared in all respects, and cause it to be investigated and certified by one of his deputies, so far as it is practicable in that district, and will then forward it to the collector of the district in which the order for the imprinting of the stamps was issued, who will furnish the additional evidence required, and forward the claim to this office with proper certificate and recommendation. When claims are presented by any person or firm other than the one for whom the order for imprinting was issued, and whose name or title does not appear upon the papers on which the stamps are imprinted the claimant, in addition to the certificate of the collector and depu

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collector aforesaid, must satisfactorily establish the fact of ownership of the stamps and furnish a certificate of sale by each owner of them from the time of their purchase from the person or firm for whom the order for imprinting was issued.

The owners of imprinted instruments, checks, drafts, etc., who desire to have the stamps thereon redeemed must, in addition to filing claims as aforesaid, forward all such imprinted instruments securely packed to this office. Packages containing the same should be addressed to the Commissioner of Internal Revenue, Washington, D. C., and each package should be plainly marked with the name and address of the owner who made the claim for redemption, and a statement of the number and kind of instruments contained in the package. Stamps for each claim should be packed separately, and no package should contain stamps presented for redemption on more than one claim.

The appropriation authorizing and providing for the cancellation of stamps, and return of checks, drafts, etc., having expired June 30, 1903, such stamps can not in future be canceled and the instruments returned, but will be destroyed upon the allowance of claims.

All packages of stamped papers and stamps forwarded to this office for redemption should be transmitted by express or registered mail, and all expense of forwarding same must be paid by the claimants, as the Government is not authorized under any circumstances to pay such expenses, or any part thereof.

Collectors are instructed to see that claims are completed in full compliance with law and regulations before the same are forwarded to this office.

J. C. WHEELER, *Acting Commissioner.*

(705.)

Wine manufacturer.

The exemption from special tax granted to a wine manufacturer by section 3246, Revised Statutes, does not afford him any protection from the consequences of selling his wine in violation of the laws of his State or the local ordinances.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 2, 1903.

SIR: In reply to your letter of the 28th ultimo, you are hereby advised that while a person who manufactures wine from fruit of his own growing (or from grapes that are grown by himself or by others) and sells it at the place of manufacture, or at one "general business office," is exempted by the provisions of section 3246, Revised Statutes, from special tax as a liquor dealer under the internal-revenue laws of the United States on account of such sales, yet this exemp-

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tion does not protect him from prosecution under the laws of his State, or under local ordinances, for selling his wine in violation of those laws. Even when a person has paid special tax under the internal-revenue laws as a liquor dealer and received his stamp for this business, he is not thereby protected from the consequences of carrying on this business at any place where the local laws prohibit. (See on this point section 3243, Revised Statutes of the United States.)

Respectfully, J. C. WHEELER, *Acting Commissioner.*

Mr. W. S. BAICHLEY, *West Salem, Ill.*

(706.)

Legacy tax.

Reversions in estates, reported on returns prior to July 1, 1901, held to be taxable, pending the decision of the courts, if vested prior to July 1, 1902.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 2, 1903.

SIR: In reply to a letter from you of June 30 last, asking if it was the intention of this office to enforce payment on reversions, notwithstanding T. D. 420, you were advised in a letter of May 5 that this matter was being considered, and if it was decided to tax reversions on returns filed prior to July 1, 1901, before final distribution, you would be duly informed.

You are now advised that, pending the decision of the courts as to the taxability of reversionary interests under the war-revenue act and the amendatory act of March 2, 1901 (see circular 646), all such interests vested prior to July 1, 1902, are held to be taxable, although not vested in actual possession or enjoyment prior to that date.

Respectfully, J. C. WHEELER, *Acting Commissioner.*

MR. F. L. GOLDSBOROUGH,
Collector Internal Revenue, Baltimore, Md.

(707.)

Special tax—Transfer of distillery with distilled spirits.

Where a distiller makes over to his son his distillery and the distilled spirits therein, he does not thereby become involved in special-tax liability as a wholesale liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 2, 1903.

SIR: In reply to your letter of the 22d ultimo, concerning ——— ———, proprietor for many years of distillery No. — at ———, Wisconsin, now under suspension, who, you say, "intends to tur over to his son the entire distillery property, with 950 barrels of d

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tilled spirits in the warehouse, placing the title of the property in the name of his successor," you are hereby advised that this office coincides with you in the opinion which you express that "the sale of the spirits by ——— ——— to ——— ——— permits the son to tax-pay the same in the name of the distiller who entered them, without subjecting ——— ——— to special tax as wholesale liquor dealer," and you may so inform him.

Respectfully, J. C. WHEELER, *Acting Commissioner.*

Mr. HENRY FINK, *Collector First District, Milwaukee, Wis.*

(708.)

Sale of manufactured tobacco through the medium of vending machines.

Original stamped packages of tobacco may be sold through the medium of vending machines when only unbroken stamped packages shall be delivered from such machines.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 5, 1903.

SIR: In reply to your letter of the 28th ultimo, asking if cigars can be put up one, two, three, and five in a package and each package stamped individually; also, if chewing tobacco can be put up in 1, 1⅔, or 8 ounce individual packages, each package with its own stamp, and stating that you wish to use these commodities in coin-operating machines, you are advised that section 3392 of the Revised Statutes provides that all cigars shall be packed in boxes, not before used for that purpose, containing, respectively, 12, 13, 25, 50, 100, 200, 250, or 500 cigars each. You are therefore prohibited from putting up cigars as suggested in your letter.

Cigars can only be sold through the medium of vending or nickel-in-the-slot machines when delivered from original boxes, as provided on page 14 of regulations No. 8, revised July 1, 1903.

By reference to circular 648, dated September 23, 1903, it will be seen that the regulations of this office have been so modifed as to permit the putting up and stamping of cavendish, plug, and twist tobacco by manufacturers in packages containing 1, 1⅔, 2, 2½, 3, 3⅓, 4, 8, and 16 ounces, each such package to bear a stamp representing the exact quantity of tobacco contained therein.

As at present advised, this office can see no reason why original stamped packages of tobacco can not be sold through the medium of the vending machine, it being understood that only unbroken stamped packages shall be delivered from such machine. It has been held by this office that the use of a vending machine can not be approved for the sale of the contents of broken stamped packages

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of cavendish, plug, or twist tobacco. This ruling will be strictly adhered to, but the objection does not apply when unbroken stamped packages are to be sold.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———.

(709.)

Warehouses for cold storage of oleomargarine.

Where warehouses for cold storage of oleomargarine are merely places of storage, and not places where customers leave their orders, special tax is not required to be paid therefor, nor special-tax stamp required to be posted up therein.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 6, 1903.

SIR: This office is in receipt of your letter of the 2d instant, stating that there are several cases in your district where wholesale dealers in oleomargarine have desired to keep their oleomargarine stored in a warehouse, separate from their office where they have their special-tax stamp posted. Their books are kept at their office, all orders received, and bills sent out from said office, but the goods are delivered from their warehouse where they have no special-tax stamp posted.

You inquire whether this practice is in violation of the law, and whether wholesale dealers in oleomargarine can deliver from their warehouse orders received at their office and billed from their office, which is separate and distinct from the warehouse.

In reply, your attention is called to page 19, second paragraph of regulations No. 9, which grants manufacturers of oleomargarine the privilege of storing tax-paid packages of oleomargarine in their warehouse away from their factory under certain conditions, and you are advised that this office holds that this principle applies also to wholesale dealers in oleomargarine—namely, that a wholesale dealer in oleomargarine may store tax-paid packages of that product in his warehouse away from his principal place of business, and deliver them from such warehouse after completion of the sale thereof at the wholesale dealer's office, without paying additional tax as a wholesale dealer by reason of deliveries from such warehouse. But in every instance it must be clear that the sale has been completed at the principal office of the wholesale dealer by constructive delivery there prior to the actual delivery at the place of storage.

The receipt of an order at the principal office of a wholesale dealer and the sending of such order from said office to the storage warehouse for delivery is not a sale of the package at the principal place of business of said wholesale dealer. In order to complete sales at

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his main office, the wholesale dealer must not merely receive the order at his main office, but must make out and there deliver to the customer ordering, or send to him direct from the main office, a bill of sale, in each instance, transferring to him the ownership of the package before there is any actual delivery of the package at the place of storage.

Respectfully, J. W. YERKES, *Commissioner.*

MR. THOMAS E. DAVIS,
Collector Internal Revenue, Parkersburg, W. Va.

(710.)

List of dealers in leaf tobacco—Affidavits as to losses by fire, theft, or other casualty.

[Int. Rev. Circular No. 649.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 17, 1903.

To all collectors of internal revenue and others concerned:

As the office record of dealers in leaf tobacco is about to be revised, collectors of internal revenue are instructed to prepare and forward to this office, without delay, a list of the names and addresses, arranged alphabetically, of all leaf tobacco dealers who are registered in their respective districts. If there are no leaf dealers in their district, collectors will please so report.

In connection with the forwarding of abstracts, on Form 144, with accompanying affidavits and evidence upon which credits are claimed by manufacturers of cigars for losses by fire, theft, or other casualty, or for deficiencies in production, and also in connection with Form 146, where evidence is submitted by manufacturers of tobacco in the form of affidavits showing that an assessment for deficiences should not be made, it is necessary in all cases that the affidavits be indorsed by the collector, or his deputy, with his recommendation as to the allowance of the claim, and if an investigation was made under direction of the collector, the facts as developed by such inquiry should be shown in order that this office may give the cases proper consideration.

In all cases of losses of tobacco, or of tobacco products, by fire, theft, or other casualty, upon which the owners will base a claim for credit in their accounts, the parties suffering such losses should immediately report the facts to the collector of their district in order that he may make the necessary investigation.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

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(711.)

Recommendations for promotion, demotion, suspension, etc.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 19, 1903.

To collectors of internal revenue:

Your attention is invited to Department Circular 118, dated October 6, 1903, regarding promotions, demotions, or reductions in grade, suspensions and resignations of officers, clerks, and employees of the Treasury Department.

Hereafter, in making your recommendation for the promotion of clerks and employees in your district, you are directed to state, relative to the person recommended, the date of the last promotion, the class of work upon which engaged, the aptitude for the general work of the office, the standing in regard to punctuality, attendance, and attention to duty, and especially whether the person recommended is by comparison with other clerks or employees the best entitled to the promotion recommended by reason of ability, experience, and the zeal and fidelity displayed in the discharge of duty.

In making recommendation for demotion or reduction in the grade, position, or compensation of any clerk or employee in your district, the reason for such action shall be stated specifically and in detail, in order that such reasons may be made a part of the records of this office, as required by the provisions of section 2, Rul XII, Civil Service Rules.

In making recommendation for the acceptance of the resignation of any officer, clerk, or employee in your district, it is required that the resignation be accompanied by a statement of the reasons therefor, or the circumstances under which the same was tendered, that this office may act intelligently in the matter.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(712.)

Packages of cavendish, plug, twist, or leaf tobacco.

Dealers in tobacco are not permitted to withdraw from original stamped packages of cavendish, plug, twist, or leaf tobacco any portion thereof to be used as sample packages, affixing thereto the words "This is an authorized subdivision taken from a properly stamped package." Each such package must be individually stamped, branded, and labeled by the manufacturer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 23, 1903.

GENTLEMEN: Your letter of the 20th instant has been received, in which you refer to the recent ruling, as published in Circular 648 of September 23, 1903, requiring manufacturers to stamp their samples,

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and stating that you do not see where any provision was made for jobbers; also stating that you are large dealers in manufactured tobacco, buying your goods in large lots from five or six different manufacturers who do not furnish sample packages; that you handle about twenty different styles and brands, many of them small twists running 10s, 12s, and 14s to the pound, which would be difficult to stamp, and asking if you will not be permitted to draw samples from the stamped packages in your storehouse and paste on same a slip stating that the samples were drawn from stamped packages, and, if necessary, attaching an affidavit, certifying to the fact, made before a notary public.

In reply, you are advised that after a most careful consideration of the matter of subdivision packages of tobacco, having in view security to the Government as well as the convenience and accommodation of the large number of manufacturers who desired to put up small packages of tobacco for use as samples, Circular 648 of September 23, 1903, was issued, permitting the use of strip stamps for tobacco of the denominations of 1, 1⅔, 2, 2½, 3, 3⅓, 4, 8, and 16 ounces on packages of cavendish, plug, twist, or leaf tobacco when put up in packages of suitable materials containing the exact quantity of tobacco as represented by the stamp affixed thereto, and it has given general satisfaction. It was then thought, and is now believed, that this extension of the stamping privilege would meet every reasonable wish and demand of persons interested in the trade.

If you wish to use subdivision packages as samples in your business as jobbers, you can order them from the manufacturers in such quantity and in such statutory sizes as desired, the manufacturer being responsible for their being stamped, branded, and labeled in accordance with law and the regulations.

The regulations formerly established, authorizing a manufacturer to pack smoking or chewing tobacco in subdivisions or parcels containing not more than three-fourths of an ounce of tobacco, and requiring the name and brand of the manufacturer, and the words "This is an authorized subdivision, taken from a properly stamped package," to be printed on each subdivision, were abolished by regulation No. 8, revised July 1, 1903 (see page 45), and this office will not, under present conditions, make any modification of such regulations. Your request is, therefore, denied.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

To ——— ———.

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(713.)

Dummy cigar boxes for display.

Cigar boxes which have never been used for packing cigars, but are intended for display in advertising, while not prohibited by law, are objectionable, and their use should be discouraged.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1903.

SIR: Your letter of the 29th ultimo, and the sample empty pasteboard box, branded "——— cigars," mailed by you under separate cover, have been received.

You state that empty boxes like the sample are being furnished by ———, —— district of ———, to dealers in your district for use as a display in advertising, and ask if such display of empty boxes is not against the ruling of this Department.

In reply, you are advised that while the use of such boxes for the purpose mentioned is very objectionable, it can not under existing statutes be deemed a violation of the internal-revenue laws to display them or have them in possession, as they have never been used for packing cigars. They are objectionable because they are made in the similitude of the genuine boxes placed on the market, filled with cigars, and labeled, branded, and stamped by the factory mentioned.

To all outward appearances these "dummies" contain cigars packed in boxes without being labeled, branded, and stamped, as required by law, and internal-revenue officers, in order to satisfy themselves that the law is not being violated, will be justified in opening and examining every such box wherever found. This will cause the dealers great annoyance in having their displays disturbed and the boxes opened, and for this reason their use should be discouraged.

Dealers should be advised of the objectionable character of such boxes for display purposes and be requested to abandon their use.

Respectfully, JAS. C. WHEELER, *Deputy Commissioner.*

Mr. JAMES D. GILL,
Collector of Internal Revenue, Boston, Mass.

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(714.)

Warehouse receipts.

Proprietors of special bonded warehouses may (except in case of tax-paid withdrawals) decline to deliver brandy stored in such warehouses until the warehouse receipts issued by him are surrendered, where the surrender of such receipts, before delivery of the spirits, is required by law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1903.

SIR: This office is in receipt of your letter of the 27th ultimo, in reference to the withdrawal of brandy from special bonded warehouse, and submitting the question whether the warehouseman can decline to surrender the brandy until the receipts which he has issued are produced and the storage charges paid.

In submitting this question, you state that under the laws of Kentucky the warehouseman in such cases would be liable to fine and imprisonment for allowing the brandy to go beyond his control, except upon the production and surrender of the receipts issued by him; and you also refer to the provisions contained in section 1 of the act of March 3, 1877, that the special bonded warehouses established under that act shall be in the joint custody of the storekeeper and proprietor thereof.

Under the act named, brandy deposited by distillers in special bonded warehouses may be withdrawn therefrom, free of tax, for certain authorized purposes, and unless so withdrawn must be removed upon payment of tax on or before the expiration of the bonded period. No provision is made in the act, or in any of the revenue laws respecting warehouse charges or liens therefor, and all claims on account of such charges may and should be enforced without interfering with the laws relating to the spirits deposited in such warehouses.

Neither is any provision made in the revenue law respecting warehouse receipts. But inasmuch as the delivery of the spirits without consent of the holder of such receipts might render the warehouseman liable to criminal prosecution under the laws of the State, the case here presented differs essentially from that where storage charges only are involved.

The withdrawal of spirits from these warehouses, except upon payment of tax, is a privilege accorded to the distiller. But it is not the policy of the revenue laws to grant to taxpayers privileges which would be in contravention of any law of the State, as is clearly indicated by the provisions found in section 3243, Revised Statutes.

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This office, therefore, will not compel the delivery of spirits from warehouse (except upon payment of tax, where the right of the Government would be involved) in cases where the withdrawal of the same has been enjoined by the court or would be in violation of any law of the State in which the warehouse is situated.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

To ——— ———.

(715.)

Special tax—Express company's sales of liquor to secure charges.

Where alcoholic liquor, shipped by express, is left on the hands of the express company, the company may, to secure its charges thereon, dispose of each separate shipment at a single sale, without involving itself in special-tax liability under the internal-revenue laws; but this does not relieve from liability under local prohibitory liquor laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1903.

SIR: In reply to the inquiry addressed to you by Mr. J. B. Swift, superintendent of your company at Chicago, relating to "a number of liquor shipments on hand," which he has been advised "it will not be safe * * * to sell," and especially "to attempt to sell such shipments at points where ordinances are in effect prohibiting the sale of liquor without a license," you will please inform him that if, as the fact is understood to be, these liquors are held by the Adams Express Company to secure its charges, each separate shipment may be sold at a single sale without involving the company in special-tax liability under the internal-revenue laws of the United States.

But Mr. Swift should be informed also that this exemption from liability under the internal-revenue laws can not afford any protection from the consequences of selling the liquor in violation of the laws of any State or of the local ordinances. For information as to what these laws and ordinances are on this subject, he should, of course, apply to the local authorities.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. O. HARRISON, *Washington, D. C.*

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(716.)

Distilled spirits—Marks on packages put up by wholesale liquor dealers—Regulations amended.

[Circular No. 126—Int. Rev. No. 650.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1903.

To collectors of internal revenue and others:

On and after January 1, 1904, every wholesale liquor dealer will be required to mark legibly with a stencil plate, in durable ink, on the head of each package of distilled spirits filled and stamped by him the present proof of the spirits contained in such package, as indicated in the application for stamp to cover the same, and as entered in the body of the stamp. Such marking will be in addition to the marks heretofore prescribed, and will consist of the word "proof," followed by the numerals denoting the present proof, which will be applied to the head of the package, close to the left-hand margin of the stamp and parallel thereto.

On and after the date above mentioned, the number of the stamp affixed to each wholesale liquor dealer's package will be marked on the head of the package in the manner above required in case of the proof, preceded by the word "stamp," close to the right-hand margin of the stamp and parallel thereto, the arrangement of the marks denoting proof and stamp number of wholesale liquor dealers' packages to be the same as now required in case of rectifiers' packages.

The regulations as to marking of wholesale liquor dealers' packages on page 176 of No. 7, revised April 15, 1901, are hereby amended accordingly.

Collectors will furnish a copy of this circular to each wholesale liquor dealer in their respective districts.

J. W. YERKES, *Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(717.)

Special tax—Blackberry wine—Cider.

A manufacturer of blackberry wine does not come within the exempting provision of section 3246, Revised Statutes, unless the blackberries used by him in making the wine were grown by himself, or gathered wild by himself or by persons in his employ.—There is no special tax, under the internal-revenue laws, for the manufacture or sale of cider made from the juice of apples, though fermented, if it is not changed into a compound liquor by the addition of distilled spirits or other alcoholic liquors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 14, 1903.

SIR: In reply to an inquiry addressed to this office on the 11th instant by Mr. ——— ———, of Baltimore, Md., who has to-day been

referred to you, you will please inform him that a manufacturer of blackberry wine can not lawfully sell it without paying special tax under the internal-revenue laws, unless he shows that the wine was made by him from blackberries of his own growing, or from blackberries gathered wild by himself or by persons in his employ. The exemption granted by section 3246, Revised Statutes, to manufacturers of wine, does not apply to manufacturers of wine from berries bought of others.

You will further inform Mr. ——— ——— that a manufacturer of cider from the juice of apples is not required to pay special tax under these laws for making and selling the cider, even if it has undergone fermentation, unless there has been added to it some noticeable quantity of distilled spirits or alcoholic liquor.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. P. L. GOLDSBOROUGH,
Collector Internal Revenue, Baltimore, Md.

(718.)

Legacy tax.

Contingent beneficial interests.—Preparation of claims for abatement or refunding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 18, 1903.

SIR: Frequent inquiries have been made at this office as to the methods and rules prescribed governing applications for the refunding of taxes paid on contingent beneficial interests under section 3 of the act of June 27, 1902, and the evidence necessary in presenting such claims.

On page 37 of regulations No. 14 rules are prescribed for the preparation of these claims. In addition to the rules prescribed by regulations No. 14, page 37, you are informed that claims for the refunding of taxes which have been collected on contingent beneficial interests should set forth in detail the clause or clauses of the will under which the alleged contingent beneficial interests arose, and the names of the legatees to whom such interests were ascribed as passing.

In cases where estates have not been closed, the claim should be made by the executors or administrators. Where estates have been closed and the administrators or executors discharged, the claim should be made by the legatee upon whose interest or interests the tax was paid, provided that the tax was actually deducted from the legacy, or that the legacy was decreased by the payment of the tax.

If, in any case where the estate has been closed, the tax was paid

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from the corpus of the estate, and the separate interests were not reduced on account of the taxation, the claim should be made by the residuary legatee or legatees or the parties who actually bore the burden of taxation.

In all cases the claim should be made under oath before an internal-revenue officer or an officer with a seal, and must be accompanied by a copy of the will of the decedent, and a copy of the original legacy return on Form 419, and an amended return.

The claim should be filed with the collector of the district in which the taxes were paid, or with the deputy collector of the division of the district in which the claimant resides.

A copy of office receipt, Form 1, given to the taxpayer by the collector, should also accompany the claim, or satisfactory reasons be given as to why it can not be returned to this office.

In this connection, your attention is also called to circular 646 (T. D. 695), assessment of legacy tax on remainder interests, under the revenue act of June 13, 1898.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. J. D. GILL, *Collector Internal Revenue, Boston, Mass.*

(719.)

Legacy tax.

Decision in the United States circuit court, southern district of New York.—Son-in-law considered a stranger in blood, for the purpose of taxation, under the war-revenue law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 21, 1903.

To collectors of internal revenue and others concerned:

The appended decision in the United States circuit court, southern district of New York, relative to the legacy tax due from a legacy to a son-in-law, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

King et al., Executors, etc., v. *Eidman, Collector, etc.*

STATEMENT.

This was an action brought to recover a legacy tax collected by the collector of internal revenue pursuant to the terms of section 29 of chapter 448 of the laws of 1898 (30 U. S. Stat., 448, 465), known as the war-revenue act and alleged to have been erroneously assessed.

The complaint set forth that Caroline King, by her last will and testament, appointed the plaintiffs her executors, and left one-sixth part of her estate to said executors, in trust, to take and receive the same, and to collect and receive the rents, income, and profits thereof, and to apply the same to the use of her son-in-law, Benjamin F. Lee, during the full term of his natural life, with remainder to his issue, the grandchildren

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of the said testatrix, and also a legacy to him of $1,000. It also alleged the assessment of a tax on these legacies at the rate of $7.50 for every $100, instead of at the rate of $1.25 for every $100, as contended by the executors, and the payment of the tax under protest.

The defendant demurred on the ground that the complaint did not state facts sufficient to constitute a cause of action. The sole question was whether the collector was correct in following the literal wording of subdivision 5 of section 29 of the war-revenue act and placing a son-in-law in the same category as a "stranger in blood."

OPINION.

WALLACE, *C. J.*:

Unless a son-in-law is a blood relation of his father-in-law, the legacy tax in controversy was correctly assessed. The complaint does not allege that there was any degree of lineal or collateral consanguinity between the testator and his son-in-law. The question seems too plain for serious discussion.

Demurrer sustained with costs.

(720.)

Sale of tobacco from original stamped packages.

A dealer who sells from a tax-paid package need not inquire into the purpose of his customer in buying. If he is not aware of the fact that the customer intends to resell in violation of law, he incurs no liability. While the responsibility rests upon the purchaser who resells, the person who sells him broken quantities of tobacco with the full knowledge that the customer intends to resell may be held liable under the statute, for he would be a party to and participant in the illegal act of his customer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 23, 1903.

GENTLEMEN: Your letter of the 18th instant has been received, in which you ask to be informed if you "*can* or *can not* sell plug tobacco from an original stamped package in any quantity we see fit, so long as we sell it in the store and do not deliver." You say "the responsibility falls on the purchaser, and not on us, if he attempts to resell it *not* from the stamped package."

In reply, you are advised that this office has ruled since the publication of Circular 643, dated July 14, 1903, to the effect that it is not always necessary for a dealer in manufactured tobacco to satisfy himself when he makes a sale from a tax-paid package as to whether the customer and purchaser proposes to use this tobacco purchased individually, give it to friends, or resell it. If he should resell it, then the purchaser and customer would himself be liable to prosecution because he would sell not from a stamped package.

If a dealer in manufactured tobacco should sell to a customer with the full knowledge that the customer himself intended to resell, then it is possible that the dealer would be held liable under the statute against conspiracy, for he would be a full party to and participant in the illegal act of his customer.

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This office is not of the opinion that the statute places upon the dealer who sells from a tax-paid package the responsibility of inquiring into the purpose of the customer in buying, or in following his future dealing with the tobacco bought. If he is guiltless of knowledge that the customer intends to resell in violation of the law, then he is not liable, nor is he compelled to make inquiry.

Section 3373, United States Revised Statutes, reads as follows:

> The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof. And such tobacco or snuff shall be forfeited to the United States.

Under this statute manufactured tobacco found in the hands of a dealer outside of the stamped package would be liable to seizure without reference to the question of whether or not it had been taken from a stamped package, and under the provisions of section 3363 the person selling or offering for sale any snuff or any kind of manufactured tobacco not put up in packages and stamped is made liable to heavy fine and imprisonment.

The main purpose of Circular 643, aside from the proper execution of the law, was to warn dealers in manufactured tobacco of the liabilities they incur by reason of violations of the statute, so that they might avoid any trouble in that direction if they would conduct their business in accordance with the laws.

Section 3244, Revised Statutes, declares that—

> Every person whose business it is to sell or offer for sale manufactured tobacco, snuff, or cigars shall be regarded as a *dealer in tobacco.*

Taken in conjunction with the language of section 3363, it may be presumed that the dealer described in section 3244 is a wholesale dealer who sells only unbroken stamped packages of tobacco, snuff, or cigars, because the exception in section 3363 is to the effect that such product may be sold at retail by *retail dealers* from stamped packages.

One person may be both a wholesale dealer and a retail dealer at the same time and at the same place, and may sell manufactured tobacco in any quantity, large or small, but when a stamped package is broken for the purpose of selling the contents in the capacity of a retail dealer such sales should be confined to persons other than those making purchases for resale as far as possible.

While it may be true, as stated by you, that the responsibility rests upon the purchaser who resells, the person who sells him broken quantities of tobacco may not himself entirely escape responsibility.

J. W. YERKES, *Commissioner.*

To ——— ———.

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(721.)

Marking and branding of rectifier's packages.

The ruling stated in Treasury decision 566, dated August 13, 1902, prohibiting the use of spiral brands on wholesale liquor dealers' packages of spirits, extended to rectifier's packages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 24, 1903.

To collectors of internal revenue and others concerned:

Treasury decision 566 prohibited a brand in spiral form on the stamp head of wholesale liquor dealers' packages, because in that form the brand is not sufficiently legible.

The ruling did not in terms apply to rectifiers' packages, although the necessity is the same in each case, and therefore collectors will notify rectifiers that brands in spiral form are no longer to be used on rectifiers' packages of spirits.

J. W. YERKES, *Commissioner.*

(722.)

Foreign articles in boxes of cigars.

Small match attached to each cigar by means of paper band, under section 3394, Revised Statutes, as amended by section 10, act of July 24, 1897, and further by section 2, act of July 1, 1902, not permitted.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 30, 1903.

GENTLEMEN: Your letter of the 21st instant has been received, with which you transmitted a brief in behalf of ——— ———, relative to a device submitted by him for approval by this office, and requesting a reversal of the decision rendered in my letter of the 11th instant, in which it was held that the device in question could not be lawfully used by manufacturers of cigars.

The device can be described as a small match attached to each cigar by means of an ordinary paper band on which is printed the name of the brand of the cigars.

The decision in this case, as contained in letter of the 11th instant, was based on the provisions of section 3394, Revised Statutes, as amended by section 10, act of July 24, 1897, and as further amended by section 2, act of July 1, 1902. You contend that the last-named amendment in effect repealed the amendment of July 24, 1897. As may be seen by the regulations of this office, which took effect July 1, 1903, this office took a different view and held in substance that the act of July 1, 1902, was intended by Congress as an amendment to the last paragraph or clause of section 3394, beginning with the

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words "nor shall," etc. This position is borne out by the report of the Committee on Ways and Means in reporting the bill for passage, in which the following language is used:

> The amendment proposed by the Committee provides a uniform rule for the treatment of cigars, cigarettes, smoking and plug tobacco, and with reference to the exclusion of obscene and immoral pictures; and it extends the antilottery laws to all classes of tobacco.

And further—

> The amendment proposed does not in any way affect the revenue, and the Committee think it will encourage competition by the legitimate use of tags and coupons and will prevent the use of obscene pictures and objectional matter in all grades of tobacco.

There is nothing in the report that indicates that the lawmakers had in mind the repeal of the previous amendment, which excluded from statutory packages of tobacco and cigarettes "any article or thing whatsoever other than the manufacturer's wrappers and labels, the internal revenue stamp, and the tobacco or cigarettes, respectively, put up therein on which tax is required to be paid under the internal revenue laws."

While the language of this amendment refers to tobacco and cigarettes only, it is held that the amendment of July 1, 1902, in effect extends the prohibition found in the previous amendment to packages of cigars as well.

Since the passage of the act of July 24, 1897, it has been held by this office in its regulations that a statutory package of tobacco, snuff, cigars, or cigarettes means a package which contains only that article upon which the tax has been paid and no other substance or thing, and that the inclusion of such article means the exclusion of all foreign articles and articles concerning other business—except only that manufacturers may place within their statutory packages containing tobacco, snuff, cigars, or cigarettes small advertising cards, coupons, certificates, paper bands, circulars, trade-mark tin tags, and trade-mark slips, which do not materially increase the weight of the contents or the size of the package, and which are intended as an advertisement of the business of the manufacturer and concerning the manufacture and sale of his tobacco, snuff, cigars, or cigarettes, and no other business.

The enactment of the amendment to section 3394 by the act of July 24, 1897, was made necessary from the fact that the practice of manufacturers of tobacco, snuff, and cigars of loading their statutory packages with foreign articles had grown to an abuse of the privilege and a menace to the proper supervision of the taxable products and the collection of the tax.

Holding this view, and in consideration of the authority conferred on the Commissioner of Internal Revenue by section 3396 to prescribe such regulations as he may deem most effective for the collec-

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tion of the tax on cigars and the prevention of frauds, I can not agree with your contention, and must maintain the regulations promulgated pursuant to the law which took effect July 1, 1903. It is very necessary that the weight of boxes of cigars should not be increased by articles placed within the boxes.

It is therefore necessary to rule that the application of ——— for the approval of his device must be denied.

Respectfully, J. W. YERKES, *Commissioner.*

To ——— ———.

(723.)

Subdivision packages.

Office justified, under existing statutes, in abolishing subdivision packages of smoking and chewing tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 30, 1903.

SIR: Your letter of the 5th instant has been received, with which you transmitted a communication signed in the name of ——— and ——— in behalf of the ———, requesting the abrogation of regulations No. 8, which took effect July 1, 1903, abolishing subdivision packages of smoking and chewing tobacco.

In the communication filed by you it is stated that the opinion of the directors of ———, "was that the ruling on subdivision packages of smoking and fine cut was unjust, if not illegal."

The law provides that all manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of certain specific sizes, "*and in no other manner.*"

This office is of the opinion that it was fully justified by existing statutes in abolishing the use of subdivision packages of smoking and chewing tobacco, and in fact it has not been discovered that any legal authority exists for the putting up of packages of tobacco, snuff, or cigars in any sizes other than those provided for by section 3362, Revised Statutes, as amended.

When regulations granting the privilege of putting up the contents of statutory packages in subdivisions were made, the number of different sizes of statutory packages was not so large as now provided for by law, and the concession then made to manufacturers was deemed necessary. Since the statute now provides for packages of 1 ounce, the call for sample packages is met and the necessity for such concession no longer exists. This being the case, the authority for subdividing the contents of statutory packages was annulled by the latest regulations.

It may be said that the primary cause for changing the regulations

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so as to abolish subdivision packages which had theretofore been permitted was that it was found to be contrary to the statutes which provide for packages of specific sizes, which packages must be stamped, labeled, etc.

Other reasons were found which call for this action, the nature of which it is unnecessary to state here.

Section 3362, as amended by section 14, act of March 1, 1879, and the act of January 9, 1883, and section 3, act of June 13, 1898, provided for packages of smoking and chewing tobacco of 1 ounce, 1⅓ ounces, 2½ ounces, 3½ ounces, 8 ounces, and 16 ounces each.

The act of March 2, 1901, states that, in addition to the packages of smoking tobacco now authorized by law, there shall be packages of 2 ounces, 3 ounces, and 4 ounces. Under these amendments to section 3362, the packages for smoking tobacco are limited to 1, 1⅓, 2, 2½, 3, 3½, 4, 8, and 16 ounces, and no provision is made for subdivisions of these statutory packages containing a less quantity than is represented by the tax-paid stamps which the law requires to be affixed to such packages.

In view of the statutes above noted and the regulations promulgated pursuant to the authority vested in the Commissioner of Internal Revenue, I deem it absolutely necessary for the protection of the revenues and the proper supervision of the same to insist on a compliance with the provisions of such regulations relative to the abolishing of subdivision packages.

You are authorized to communicate to the ——— the purport of this letter.

JOHN W. YERKES, *Commissioner.*

To ——— ———.

(724.)

Cigars exposed for sale in boxes without covers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 5, 1903.

The following material portion of a ruling made by this office November 24, 1903, is published for the information of internal-revenue officers and all others concerned.

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 24, 1903.

SIR: * * * You inclose copy of a letter from Collector ——— to ———, in which it is stated that "the Department permits the keeping of the covers of cigar boxes directly under the particular box to which it belongs while in the case."

* * * * * * *

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In reply, you are advised that this office does not recall that it has given such permission. * * * It would be contrary to its policy to formally authorize the separation of the covers from stamped boxes of cigars. * * *

In a broad sense, a box of cigars without a cover is not a statutory package. A considerable part of the stamp, and possibly also the brand and caution notice, is missing. *Prima facie*, as the box has but part of a stamp upon it, it is liable to forfeiture under section 3398, Revised Statutes. The evidence of tax payment is the stamp. Part of a stamp is not such evidence, and in such case the burden of proof that the contents were tax-paid would be on the party in possession.

It is recognized that the lid of an open box of cigars in a case obscures the view of the contents of an adjoining box, and for this reason more case room is required for cigars in boxes with lids attached. This office can not, however, commit itself to the proposition that part of a box and of a stamp may be entirely detached from the main portion, without any liability being thereby incurred.

As this matter has not heretofore been made the subject of a ruling, no hasty action should be taken in the case of parties who have removed the covers of boxes of cigars. They should be advised that it is to their interest, as well as the interest of the Government, that cigars should be kept under cover of the stamp, marks, and brands in complete form.

* * * * * * *

Respectfully, J. W. YERKES, *Commissioner.*

Mr. F. G. THOMPSON, *Internal Revenue Agent, Albany, N. Y.*

(725.)

Subdivision packages of tobacco.

Subdivision packages of fine-cut chewing tobacco, which in themselves are not statutory packages, are by the regulations permitted to be used without the words "This is an authorized subdivision taken from a properly stamped package" being printed thereon, as this wording is considered misleading and unwarranted under the present regulations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 5, 1903.

SIR: Your letter of the 24th ultimo was duly received, in which you make certain inquiries concerning subdivision packages for fine-cut chewing tobacco.

In reply, you are advised, and you may inform the manufacturers of fine-cut chewing tobacco in your district, that no subdivisions of the contents of packages of fine-cut chewing tobacco will be permitted which are in themselves of a weight fixed by section 3362 as amended as statutory packages. When packages weighing 1, 1⅓, 2, 2½, 3, 3½, 4, 8, or 16 ounces each are put up in a factory, such packages must be stamped, labeled, etc., as required by law.

In times past authority has been granted for subdivisions which at the time were not of a weight included among those provided for by law, but some of which have since been embraced among the weights

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fixed for lawful packages by subsequent legislation requiring their elimination from authorized subdivisions of fine-cut chewing tobacco.

Under the provisions of regulations No. 8, revised July 1, 1903, manufacturers of fine-cut chewing tobacco are authorized to put up such product in subdivision packages, and so long as such subdivisions do not come within the designation of statutory packages, their size or weight is immaterial. Manufacturers should, however, guard against putting up subdivisions of a weight so closely approaching the weight of a statutory package as to call for an investigation of their goods on the market to determine whether packages requiring stamps have been removed without the proper stamps being affixed thereto.

In reply to your second inquiry as to the necessity for imprinting on the subdivisions of statutory packages of fine-cut chewing tobacco the words "This is an authorized subdivision taken from a properly stamped package," you are informed that this office regards this legend printed upon a package of tobacco, snuff, or cigars as misleading and unwarranted under the present regulations, and the same should be omitted from subdivision packages of fine-cut chewing tobacco.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. DAVID MEGINNITY,
Collector Internal Revenue, Detroit, Mich.

(726.)

Inventories.

The stocks inventoried by manufacturers of cigars and tobacco on January 1 next shall be examined and each inventory verified by a deputy collector, and Forms 144 and 146 should be prepared and forwarded to the office within ninety days from the 1st day of January.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 9, 1903.

To collectors of internal revenue:

Attention is called to the provisions of sections 3358 and 3390, Revised Statutes of the United States, which require manufacturers of tobacco and manufacturers of cigars, respectively, on the first day of January of each year to make an inventory of their stock of tobacco material and manufactured products, and unattached stamps, held or owned by them on that date.

Manufacturers should be supplied during the present month with the necessary inventory blanks, Form 70*a* or 70*b*, so that they may comply with the requirements of the statutes without unnecessary delay.

The office desires that the stocks inventoried shall be examined and each inventory verified by a deputy collector not later than the

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20th day of January, and collectors will therefore direct their deputies to so arrange their routes as to accomplish this work within the time indicated.

Assessments for deficiencies are predicated in part on these inventories, and it is essential that all doubt as to the accuracy of an inventory should be removed before the new accounts for the succeeding year are formally opened.

Collectors are required, upon receiving these inventories properly verified, to prepare an abstract statement of each manufacturer's account on Forms 144 and 146, which should be completed and forwarded to this office within ninety days from the first day of January.

Special attention is called to the regulations No. 8, revised, pages 41 and 52, relating to inventories, and to instructions 5 and 6 on Form 144, and to the third paragraph on page 68 of the regulations, which relate to deficiencies discovered at the time an annual inventory is filed.

Attention is also called to TREASURY DECISIONS, volume 1 (1899), decision 20480, relating to outside storage of leaf tobacco by manufacturers, and volume 2 (1899), decision 21449, which relates to imported cigar leaf tobacco not received at the factory and which can not properly enter into the manufacturers' accounts.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(727.)

Regulations prohibiting the giving out by collectors of records in their offices, or copies thereof, for purposes not contemplated by the internal-revenue laws.

[Int. Rev. Circular No. 651.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 10, 1903.

The attention of collectors of internal revenue, district attorneys, and all others concerned is called to the following extracts from regulations No. 12, revised:

All records in the offices of collectors of internal revenue, or of any of their deputies, are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them, and no discretion with regard to permitting the use of them, for any other purpose.

Collectors are hereby prohibited from giving out any special-tax records, or any copies thereof, to private persons or to local officers, or to produce such records, or copies thereof, in a State court, whether in answer to subpœnas *duces tecum* or otherwise.

Whenever such subpœnas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department.

The information contained in the records relating to special-tax payers, in the collector's office, is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records, or of any copies thereof, for use against the special-tax payers in cases not arising under the laws of the United States. The giving out of such records, or any copies thereof, by a collector in such cases is held to be contrary to public policy and not to be permitted.

As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them, or any copies thereof, at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in Rule X of the rules and regulations of the Treasury Department, namely:

"In all cases where copies of documents or records are desired by, or on behalf of, parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only, and on a rule of the court upon the Secretary of the Treasury requesting the same."

Whenever such rule of court shall have been obtained, collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication under the seal of the Department and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which make it necessary to decline, in the interests of the public service, to furnish such copy.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(728.)

Special tax—Sales and shipments to foreign customers.

Where a broker, or other person, receiving orders from a foreign customer for whisky, wine, oleomargarine, or other articles for the sale of which special tax is required to be paid, buys these articles and sells them on his own account in the United States, consigning them here as the property of the foreign customer to whom they are shipped, special tax is required to be paid for such sales.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 12, 1903.

SIR: Your letter of the 7th instant has been received, submitting the question "whether a broker or an agent of the manufacturer may obtain orders for goods from foreign countries, subject to export and shipment by manufacturer under his bond, without liability to special tax for so doing."

There is no special-tax liability in such a case as this, where the manufacturer fills the order and makes the sale himself, the broker merely acting as shipping agent for him in sending the distilled spirits, or oleomargarine, or other goods ordered, to the purchaser abroad.

Where, however, a broker or agent, on an order received from a foreign customer for whisky, or wine, or oleomargarine, or other articles for the sale of which special tax is required to be paid, act-

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ing for himself, buys these articles and sells them in this country, consigning them here as the property of the foreign customer to whom they are shipped, special tax is required to be paid for such sales.

The ruling to which you refer, No. 28 in TREASURY DECISIONS, 1900 (vol. 3, p. 28), you will see refers to a case in which a person exporting an article "does not sell in this country," but is "shipping it to foreign countries, and there selling it."

The ruling in regulations No. 7, revised April 15, 1901, at the foot of page 189, that "the purchase of spirits solely for exportation and sale abroad does not constitute the purchaser a wholesale liquor dealer," is in line with above ruling No. 28. But where the sales are made in this country, special tax is required to be paid under ruling 20877 in TREASURY DECISIONS, 1899 (vol. 1, p. 581).

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. W. FRANK KINNEY,
Collector of Internal Revenue, Hartford, Conn.

(729.)

Special tax—Sale of grape juice after fermentation.

Persons who buy unfermented grape juice and sell it after it has undergone fermentation are required to pay special tax as liquor dealers. They are not exempt as manufacturers of wine under section 3246, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 17, 1903.

SIR: Your letter of the 12th instant has been received, wherein you say:

We prepare unfermented grape juice by first sterilizing with 180° heat, then fortify with a preservative, and we ship this goods in bulk when so ordered, and some of our customers do not bottle it, but retail it from the barrel, thus aerating it, which generates 1 to 3 per cent alcohol, and several have had to pay retail liquor tax, while when they received the goods it was as free from alcohol as the fruit was on the vine.

You are informed that the grape juice, after such fermentation, became wine in contemplation of the internal-revenue laws, containing a noticeable quantity of alcohol, and retail dealers therein were properly required to pay special tax as retail liquor dealers under these laws. As they do not in anyway manipulate the grape juice received from you, but sell it from the barrel, the result of which is the aeration of the juice, by which it is changed into wine without any act of these dealers, it is held by this office that they can not be regarded as manufacturers of the wine, as you suggest. They, therefore, can not be considered as coming within the exempting provision of section 3246 of the Revised Statutes.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. S. NIBLACK, *Virgil, Ga.*

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(730.)

Special tax—Oleomargarine.

A merchant and retail dealer in oleomargarine who sells his stock of goods, including oleomargarine, to his successor in business, is not required to pay special tax on this account as a wholesale dealer in oleomargarine.—A sheriff who levies upon and sells oleomargarine is not required to pay special tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1903.

SIR: In reply to the first question submitted in your letter of the 12th instant, you are hereby advised that a merchant who holds a special-tax stamp as a retail dealer in oleomargarine, and who, as you state, "sells his stock of goods, including his oleo, to his successor in business," is not required to pay special tax on this account as a wholesale dealer in oleomargarine.

In reply to your second question, you are hereby advised that a sheriff, or other officer, who levies upon and sells the oleomargarine belonging to the stock of goods of a retail dealer in oleomargarine, is not required to pay special tax therefor. In thus selling the oleomargarine he is acting in his official capacity, in discharge of duties imposed upon him by law and in obedience to the order of the court, and therefore can not be held to any special-tax liability on this account.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. THOMAS E. DAVIS,
Collector of Internal Revenue, Parkersburg, W. Va.

(731.)

Cigars sent by mail or express.

The placing of one or more cigars in a separate box to be forwarded by mail or express or otherwise as a sample to prospective customers, whether such cigars are taken from stamped packages or not, is illegal, and can not be authorized nor permitted under the law. The sale, or offering for sale, or keeping for sale, of cigars in boxes not bearing the proper internal-revenue stamp is prohibited by section 3398, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1903.

SIR: With your letter of the 16th instant you transmitted a letter addressed to Mr. ——— ———, which reads as follows:

I would like to mail one cigar in a box to some private trade. The cigar will be taken from the original package. Kindly let me know whether this is permissible and in keeping with the rules of your office.

As similar questions frequently arise, it is deemed proper to call attention to the law and regulations bearing on the subject, with a view of answering definitely all such inquiries.

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Section 3392, Revised Statutes, provides that all cigars shall be packed in boxes not before used for that purpose, containing, respectively, 25, 50, 100, 200, 250, or 500 cigars each, and provides further that the manufacturer may pack in boxes not before used for that purpose cigars not to exceed 13 nor less than 12 in number, to be used as sample boxes. This is the only legal provision for sample boxes of cigars.

A further provision in said section is—

That nothing in this section shall be construed as preventing the *sale* of cigars at retail by retail dealers * * * from boxes packed, stamped, and branded in the manner provided by law.

No reference is made to the removal of cigars from a stamped package for free distribution as samples. Their *sale* by a retail dealer from a stamped package only is provided for.

Pursuant to these requirements of the law, notice is given in the first paragraph, page 14, regulations No. 8, revised July 1, 1903, as follows:

A dealer in tobacco for the purpose of soliciting trade is not privileged to repack any number of cigars in an unstamped box for transmittal by mail, express, or other method of delivery to prospective customers, and no provision is made by law or regulation for free samples of cigars or cigarettes.

This regulation was in conformity also with the ruling of this office as set forth in Treasury decision 21257 (vol. 2, p. 259), relative to seizure of certain boxes of cigars containing a number of cigars greater or less than required by the statutes. This position was sustained in the decision of Judge Locke in United States *v.* Jose Mena (29 I. R., p. 190), in which it was also held that the prohibition of such packing was not confined to manufacturers, but applied to every person who sells, or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put up in each box, respectively. * * *

Section 3398, Revised Statutes, reads:

The absence of the proper revenue stamp on any box of cigars sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the non-payment thereof, and such cigars shall be forfeited to the United States.

Under this section it is not material whether the cigars have been tax paid or not. If found in boxes not bearing proper revenue stamps when sold, or offered for sale, or kept for sale, they shall be forfeited to the United States, as set forth in the last paragraph of page 13, regulations No. 8, revised July 1, 1903, as follows:

The absence of the proper revenue stamps on any box or other package of cigars or cigarettes sold or offered for sale, or kept for sale, will be sufficient notice to all persons that the tax has not been paid and prima facie evidence of the non-payment of the tax, and such cigars will be subject to forfeiture as provided by Section 3398 of the Revised Statutes.

(Jackson *v.* United States, 39 I. R., p. 279.)

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Section 3396, Revised Statutes:

The Commissioner of Internal Revenue may prescribe such regulations for the inspection of cigars, cheroots and cigarettes and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax.

Under these sections of the law and the regulations promulgated in pursuance thereof, this office finds no ground for authorizing the placing of one or more cigars in a separate box to be forwarded by mail or express or otherwise as a sample to prospective customers, whether such cigars are taken from stamped packages or not, and such a practice is held to be illegal and can not be authorized nor permitted.

Respectfully, JOHN W. YERKES, *Commissioner.*

To ——— ———.

(732.)

Special tax—Druggists redistilling alcohol for sale.

Druggists who deodorize and redistill alcohol for sale involve themselves in special-tax liability as rectifiers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 19, 1903.

SIR: In reply to the letter addressed you on the 9th instant by the ———, which you have referred to this office, you will please inform them that they can not, as they desire, deodorize alcohol "by treating it with potassium permanganate and redistilling" for sale to their customers "for use in some preparations in which it is necessary to do away with the strong odor of grain alcohol," without involving themselves in special-tax liability as rectifiers under the internal-revenue laws of the United States.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. JOHN C. ENTREKIN,
Collector Eleventh District, Chillicothe, Ohio.

(733.)

Fine-cut chewing tobacco—Unstamped subdivisions as samples.

The distribution, as free samples, of packages of fine-cut chewing tobacco in unstamped subdivisions is unauthorized. Authority given under present regulations to put up subdivisions of statutory packages was intended to apply only to salable subdivisions for the retail trade.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 19, 1903.

SIR: Your letter of the 14th instant has been received, in which you ask whether manufacturers will be permitted to put up one-half ounce subdivision packages of fine-cut chewing tobacco in a carton of 10 pounds or 1 pound, the carton to be legally stamped, caution

notice on same, and containing other provisions of the regulations, these unstamped subdivisions to be distributed as free samples while in the legally stamped package.

In reply, you are advised that when subdivision packages of smoking and chewing tobacco were abolished by the regulations which went into effect July 1, 1903, and an exception was made in favor of fine cut, it was not contemplated that this exemption should be construed as authorizing the putting up and distribution, as free samples, of packages of fine-cut tobacco in unstamped subdivisions.

The regulations referred to practically abolished sample packages with the legend "This is an authorized subdivision taken from a properly stamped package," and the office will not sanction the distribution of such samples for advertising purposes.

The exception made in said regulations in favor of fine-cut chewing tobacco was intended as an accommodation to enable manufacturers to put up salable subdivisions for the retail trade, it having been represented that this was necessary to prevent the tobacco from drying out, but it is expressly stated in the regulations that "such subdivisions or parcels when repacked in proper statutory packages shall contain in the aggregate the number of pounds or ounces of tobacco denoted by the stamp affixed to the package," and that "all subdivisions of fine-cut chewing tobacco shall remain in the original package to which the stamp is affixed until they are *sold at retail* and delivered directly from the stamped package to the consumer."

In connection with Treasury decision 723, issued November 30, 1903, with reference to subdivision packages, I would say that manufacturers of fine-cut chewing tobacco are authorized under present regulations to put up such product in subdivision packages, and so long as such subdivisions do not come within the designation of statutory packages, their size or weight is immaterial, but they must be sold and delivered directly from the original stamped package to the consumer.

The practice of some manufacturers of fine cut of putting up their product in subdivisions of a size and weight so closely approaching the weight of a statutory package as to invite an investigation of their goods on the market to determine whether packages have been removed requiring stamps, without the proper stamp being affixed thereto, and of putting out free sample packages with the legend "This is an authorized subdivision taken from a properly stamped package" printed thereon, is a source of embarrassment to this office, and if persisted in may result in the withdrawal of the privileges accorded them under the present regulations of putting up subdivisions of statutory packages.

* * * * * * *

Respectfully, JOHN W. YERKES, *Commissioner.*

To ——— ———

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(734.)

Distilled spirits—Marks on wholesale liquor dealers' packages—Regulations amended.

[Circular No. 136—Int. Rev. No. 652.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 24, 1903.

To collectors of internal revenue and others:

A number of wholesale liquor dealers having expressed a preference for cutting or burning, instead of stenciling, as the method of applying the required marks to the heads of packages of distilled spirits put up by them, which method of cutting or burning gives results equally satisfactory with those accomplished by stenciling, Department circular 126 (Int. Rev. No. 650) of November 9, 1903, is hereby so far modified as to permit wholesale liquor dealers to affix the required marks by legibly cutting or burning the same on the head of the package, or by stenciling.

The option is also hereby given to wholesale liquor dealers either to mark their packages in the manner required by the terms of the circular referred to as above amended, or, in lieu of the marks relating to the proof therein prescribed for the head of the barrel, to legibly cut or burn the numerals denoting the present proof of the contents of the package on the bung stave of the barrel, on the side of the bunghole opposite to the stamp head.

Collectors will furnish a copy of this circular to each wholesale liquor dealer in their respective districts.

JOHN W. YERKES, *Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(735.)

Violation of internal-revenue laws.

Regulation relative to marking or branding of retail packages of oleomargarine sustained.—Sentence of imprisonment imposed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 26, 1903.

SIR: Your letter of the 19th instant, in regard to the case of ———, who was indicted November 6, 1903, for violation of the oleomargarine law, has been received.

This party was charged with selling oleomargarine without having the packages properly marked and branded as required by the law

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and regulations. The evidence showed that he had the goods marked and branded as required, but that the wrappers on which the marks appeared were folded in such a manner as to conceal the words required by the regulations. The court inflicted a penalty of ninety days' imprisonment and payment of costs.

Decisions of this kind will be very helpful to this office in its efforts to enforce the law and regulations in reference to oleomargarine.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. S. H. BETHEA, *United States Attorney, Chicago, Ill.*

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